

1 IN THE UNITED STATES DISTRICT COURT  
2 FOR THE EASTERN DISTRICT OF TEXAS  
3 MARSHALL DIVISION  
4  
5 UNITED SERVICES AUTOMOBILE ) (  
6 ASSOCIATION ) ( CIVIL ACTION NO.  
7 VS. ) ( 2:18-CV-366-JRG  
8 ) ( MARSHALL, TEXAS  
9 JANUARY 9, 2020  
10 ) ( 8:30 A.M.  
11  
12

TRANSCRIPT OF JURY TRIAL

10 MORNING SESSION

11 BEFORE THE HONORABLE CHIEF JUDGE RODNEY GILSTRAP,

UNITED STATES DISTRICT JUDGE

## ABREVIATIONS.

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29 Official Court Reporter  
30 United States District Court  
31 Eastern District of Texas  
32 Marshall Division  
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34 Marshall, Texas 75670  
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36  
37 (Proceedings recorded by mechanical stenography, transcript  
38 produced on a CAT system.)

39  
40

08:30:12 1 P R O C E E D I N G S

08:30:12 2 (Jury out.)

08:30:13 3 COURT SECURITY OFFICER: All rise.

08:30:13 4 THE COURT: Be seated, please.

08:30:27 5 Are the parties prepared to read into the record

08:30:31 6 those items from the list of pre-admitted exhibits used

08:30:34 7 during yesterday's portion of the trial?

08:30:36 8 MR. BUNT: Yes, Your Honor, we are.

08:30:37 9 THE COURT: Please proceed.

08:30:38 10 MR. BUNT: Your Honor, the following Plaintiff's

08:30:40 11 Exhibits came in during the trial yesterday: 13, 22, 23,

08:30:48 12 28, 427, 429, 1182, 1265, and 1266.

08:30:57 13 THE COURT: Is there any objection to that

08:31:00 14 rendition by the Defendant?

08:31:02 15 MR. UNDERWOOD: No objection, Your Honor.

08:31:03 16 THE COURT: Do you have a similar rendition to

08:31:05 17 offer, Mr. Underwood?

08:31:07 18 MR. UNDERWOOD: We do. The following Defendant's

08:31:10 19 Exhibits were used yesterday, DTX-5, DTX-38, DTX-223,

08:31:17 20 DTX-230, and DTX-267.

08:31:20 21 THE COURT: All right. Any objection, Mr. Bunt?

08:31:22 22 MR. BUNT: No, Your Honor.

08:31:23 23 THE COURT: All right. Counsel, thank you.

08:31:24 24 Mr. Saffici, if you're present, please return to

08:31:29 25 the witness stand, sir, and I remind you you remain under

08:31:33 1 oath.

08:31:34 2 Counsel, do we have anything else we need to take  
08:31:37 3 up before we proceed with the remaining cross-examination  
08:31:39 4 of this witness?

08:31:40 5 MR. SHEASBY: Nothing for Plaintiffs, Your Honor.

08:31:41 6 MR. JOHNSON: Nothing for Defendants, Your Honor.

08:31:43 7 THE COURT: All right. You may go to the podium,  
08:31:46 8 Mr. Sheasby.

08:31:46 9 MR. SHEASBY: Thank you, Your Honor.

08:31:47 10 THE COURT: Mr. Johnston, would you bring in the  
08:31:49 11 jury, please?

08:32:07 12 COURT SECURITY OFFICER: All rise.

08:32:08 13 (Jury in.)

08:32:08 14 THE COURT: Good morning, ladies and gentlemen.  
08:32:18 15 Welcome back. Please have a seat.

08:32:19 16 It's 8:32. I'm doing better.

08:32:25 17 All right. We'll continue with the  
08:32:26 18 cross-examination of Mr. William Saffici by the Plaintiff.

08:32:33 19 Mr. Sheasby, you may continue.

08:32:36 20 MR. SHEASBY: Mr. Huynh, can we have PX-1187,  
08:32:42 21 Page 22?

08:32:42 22 WILLIAM SAFFICI, DEFENDANT'S WITNESS, PREVIOUSLY SWORN  
08:32:42 23 CROSS-EXAMINATION CONTINUED

08:32:43 24 BY MR. SHEASBY:

08:32:43 25 Q. Mr. Saffici, I'm going to show you a passage from the

08:32:49 1 '681 patent specification. If you'll go to Column 4,  
08:32:54 2 Lines 37 through 49?

08:32:57 3 THE COURT: Mr. Sheasby, why don't you direct that  
08:32:59 4 microphone so that it points in your direction better.

08:33:03 5 Thank you.

08:33:03 6 MR. SHEASBY: Thank you, Your Honor.

08:33:04 7 Q. (By Mr. Sheasby) Now, this is a passage from the  
08:33:07 8 specification of the '681 patent, fair?

08:33:11 9 A. Yes.

08:33:11 10 Q. This passage also is present in the '605 patent  
08:33:16 11 specification, fair?

08:33:17 12 A. Yes.

08:33:20 13 MR. SHEASBY: Mr. Huynh, let's go ahead and  
08:33:24 14 underline an image capture device may be communicatively  
08:33:29 15 coupled to a computer; do you see that, sir?

08:33:32 16 A. Yes, I do.

08:33:32 17 Q. It says: An image capture device may be, for example,  
08:33:35 18 a scanner or digital camera; do you see that, sir?

08:33:37 19 A. Yes, I do.

08:33:38 20 Q. And yesterday, you told the ladies and gentlemen that  
08:33:40 21 you felt that that was teaching to a person of ordinary  
08:33:43 22 skill in the art, only a camera and a general purpose  
08:33:46 23 computer that were in separate physical boxes, fair?

08:33:49 24 A. That is what I said, yes.

08:33:50 25 Q. But the reality is that this passage describes an image

08:34:00 1 capture device that is communicatively coupled to a general  
08:34:04 2 purpose computer and does not place any limits on how that  
08:34:08 3 coupling occurs, correct?

08:34:10 4 A. Disagree.

08:34:13 5 Q. Can you turn to Tab 3 of your binders, Mr. Saffici?

08:34:21 6 A. Tab 3. Yes, I'm there.

08:34:23 7 Q. Can you turn to Page 62, Lines 24 to 63, Line 4?

08:34:37 8 A. 62, again, please?

08:34:38 9 Q. 62, Lines 24 to 63, Line 4.

08:34:48 10                   The question starts: Does the passage at  
08:34:50 11 Column 4, Line 37; do you see that, sir?

08:34:53 12 A. Right.

08:34:54 13 Q. Go ahead and read that testimony to yourself.

08:35:06 14 A. Yes, I read that.

08:35:07 15 Q. Sir, the passage that we're showing at Column 4,  
08:35:16 16 Lines 37 through 49 of this patent specification describe  
08:35:20 17 an image capture device that is communicatively coupled to  
08:35:23 18 a general purpose computer and does not place any  
08:35:27 19 limitations on how the communicatively coupling occurs,  
08:35:33 20 correct?

08:35:33 21 A. My read of that was that it was separate because it was  
08:35:39 22 supported with other information in the specification.

08:35:43 23 Q. Sir --

08:35:44 24                   MR. SHEASBY: Your Honor, may I now publish his  
08:35:46 25 testimony to the jury, which was -- which I believe was

08:35:51 1 inconsistent.

08:35:52 2 THE COURT: You can complete the impeachment  
08:35:54 3 process.

08:35:54 4 MR. SHEASBY: Okay. Mr. Huynh, can we have  
08:35:58 5 Mr. Saffici's deposition, 2 -- Volume 2, 62:24, to 63:4,  
08:36:47 6 please?

08:36:47 7 Q. (By Mr. Sheasby) Mr. Saffici, I took your deposition  
08:36:49 8 under oath in this case, correct?

08:36:51 9 A. Yes, sir.

08:36:52 10 Q. Mr. Saffici, you were given an opportunity to correct  
08:36:57 11 your deposition transcript, correct?

08:37:00 12 A. Yes, I was.

08:37:01 13 Q. Mr. Saffici, I asked you the question, quote: Does the  
08:37:05 14 passage at Column 4, Lines 37 through 49 in the '681  
08:37:10 15 describe -- '681 patent describe an image capture device  
08:37:14 16 communicatively coupled to a general purpose computer, does  
08:37:15 17 it place any limits on how the communicatively coupling  
08:37:22 18 occurs?

08:37:22 19 Your answer was: I do not see a limitation.

08:37:26 20 Correct?

08:37:26 21 A. That was my testimony, yes.

08:37:27 22 Q. And that's different from the testimony you gave the  
08:37:30 23 ladies and gentlemen of the jury on direct examination,  
08:37:31 24 correct?

08:37:31 25 A. That's correct.

08:37:36 1 Q. And so when the ladies and gentlemen of the jury retire  
08:37:38 2 to deliberate in this case, they can consider the fact that  
08:37:43 3 under oath represented by your counsel, you gave the  
08:37:48 4 testimony on the screen, you had an opportunity to correct  
08:37:52 5 that testimony, you did not correct it, and you grave --  
08:37:57 6 you gave a different answer to them yesterday, fair?

08:38:07 7 A. Yes, I did.

08:38:08 8 Q. Now, the claims of the '681 and '605 patents --

08:38:17 9 MR. SHEASBY: You can bring that down, Mr. Huynh.

08:38:20 10 Q. (By Mr. Sheasby) The claims of the '681 and '605  
08:38:24 11 patents require that there be communication between the  
08:38:28 12 digital camera and the general purpose computer, fair?

08:38:29 13 A. That's correct.

08:38:30 14 Q. There are no limits in -- in the claims as to how that  
08:38:35 15 communication occurs, correct?

08:38:36 16 A. Not in the claims.

08:38:41 17 Q. For example --

08:38:47 18 MR. SHEASBY: Let's pull up Column 4, Line 37, of  
08:38:56 19 the '681 patent, which is PX-1187, Mr. Huynh. Let's pull  
08:39:00 20 up that same passage. It was Column 4, Lines --

08:39:24 21 Q. (By Mr. Sheasby) Now, a person of ordinary skill in  
08:39:28 22 the art reading the '681 patent, Column 4, Lines 37, in  
08:39:31 23 2006, would understand that the camera was -- was connected  
08:39:35 24 to the computer in some way so that it could communicate,  
08:39:40 25 correct?

08:39:40 1 A. Yes.

08:39:40 2 Q. Doesn't matter whether it's wireless or a wired

08:39:46 3 connection, correct?

08:39:46 4 A. Yeah, that's correct.

08:39:47 5 Q. When a mobile phone has a camera, there has to be an

08:39:51 6 interconnectivity between the two, correct?

08:39:53 7 A. Ask me again, please.

08:39:56 8 Q. Sure. When a mobile phone has a camera within it,

08:40:00 9 there has to be a communication between the general purpose

08:40:05 10 processor in the mobile phone and the digital camera,

08:40:07 11 correct?

08:40:07 12 A. I would agree.

08:40:09 13 Q. There has to be a communicative coupling, correct?

08:40:14 14 A. I believe that term would apply.

08:40:18 15 MR. SHEASBY: Let's pull that down, Mr. Huynh.

08:40:27 16 Q. (By Mr. Sheasby) Now, you also showed the ladies and

08:40:31 17 gentlemen of the jury passages from the specification that

08:40:34 18 related to this question of what is the meaning behind the

08:40:38 19 phrase, a personal digital assistant, fair?

08:40:42 20 A. Yes.

08:40:42 21 Q. And we can pull up one of those passages.

08:40:45 22 MR. SHEASBY: Let's turn to PX-1186. Let's go to

08:40:55 23 Page 23 of that document, Mr. Huynh. Let's go to Column 8,

08:41:01 24 Lines 3 through 17.

08:41:08 25 Q. (By Mr. Sheasby) So we're looking at a passage from

08:41:10 1 the '605 patent, correct?

08:41:11 2 A. That's correct.

08:41:11 3 Q. It talks about using PDAs as alternatives to computers,

08:41:17 4 correct?

08:41:17 5 A. It says that can be such a device.

08:41:19 6 Q. And the concept of a personal digital assistant to a

08:41:23 7 person of ordinary skill in the art would be a handheld

08:41:25 8 device that has a general purpose computer, correct?

08:41:29 9 A. In 2006, I don't know that that was necessarily true.

08:41:40 10 Q. Okay. Can you turn to your deposition, again, at

08:41:45 11 Tab 3? If you can turn to Page 65:23 to 66:4.

08:42:02 12 A. Yes, I read that.

08:42:03 13 Q. Sir, the concept of a personal digital assistant to a

08:42:09 14 POSA would be a handheld device that has a general purpose

08:42:14 15 processor, correct?

08:42:14 16 A. That was my testimony.

08:42:16 17 Q. And by POSA, we -- we mean person of ordinary skill in

08:42:22 18 the art?

08:42:22 19 A. That's correct.

08:42:23 20 Q. That was your testimony under oath, correct?

08:42:25 21 A. That's correct.

08:42:26 22 Q. And you gave different testimony just a few moments

08:42:29 23 ago, correct?

08:42:29 24 A. I think I said --

08:42:31 25 MR. JOHNSON: Objection, Your Honor, optional

08:42:36 1 completeness as to the passage if that's the line of  
08:42:38 2 impeachment he's going to go through.

08:42:39 3 MR. SHEASBY: I won't -- I don't -- I don't intend  
08:42:42 4 to do anymore. I'm not going to impeach him. I'm not  
08:42:46 5 going to read his testimony.

08:42:47 6 THE COURT: You can address it on redirect.

08:42:49 7 MR. JOHNSON: Thank you, Your Honor.

08:42:49 8 THE COURT: Let's proceed.

08:42:51 9 Q. (By Mr. Sheasby) Now, you don't dispute that in 2006,  
08:42:55 10 there were dozens of personal digital assistants and  
08:43:00 11 smartphones that had general camera -- digital cameras  
08:43:03 12 integrated with a general purpose computer in the same  
08:43:05 13 physical box, correct?

08:43:06 14 A. I disagree with how you -- what -- with the question.

08:43:10 15 Q. By 2006, you recognize that there were personal digital  
08:43:21 16 assistants and smartphones that existed that had digital  
08:43:26 17 cameras integrated with a general purpose computer in the  
08:43:28 18 same physical box, correct?

08:43:29 19 A. I disagree.

08:43:30 20 Q. Why don't you turn to Page 2, Volume 2 -- transcript,  
08:43:36 21 66:9 through 15 in Tab 3?

08:43:42 22 A. Sorry, Tab 2 --

08:43:44 23 Q. Tab 3.

08:43:45 24 A. Tab 3.

08:43:48 25 Q. And why don't you turn to Page 66?

08:43:51 1 A. I'm there.

08:43:52 2 Q. Actually, why don't you turn to Page 67, Lines 14

08:43:56 3 through 23 and read that testimony to yourself.

08:44:14 4 A. Okay. I read it.

08:44:15 5 Q. You read Mr. Calman's report in this case, correct?

08:44:18 6 A. Yes, I did.

08:44:19 7 Q. And after reading that -- after reading his report, you

08:44:23 8 don't dispute that there were dozens of personal digital

08:44:29 9 assistants and smartphones that existed as of 2006 that had

08:44:34 10 digital cameras integrated with a general purpose computer

08:44:38 11 in the same physical box, correct?

08:44:39 12 A. That wasn't my response to the testimony.

08:44:41 13 Q. In 2006, there were at least some smartphones and

08:44:56 14 personal digital assistants that combine a general purpose

08:45:01 15 computer and digital camera in the same form factor,

08:45:03 16 correct?

08:45:03 17 A. I disagree.

08:45:04 18 Q. Okay. Why don't you turn to Column 66, Lines 9 through

08:45:12 19 15 of that same deposition, sir?

08:45:13 20 A. Through 16 you said -- or 15?

08:45:15 21 Q. 66, Lines 9 through 15.

08:45:24 22 A. Yes, I read it.

08:45:25 23 Q. Sir, in 2006, there were at least some smartphones in

08:45:30 24 personal digital assistants that combine a general purpose

08:45:36 25 computer and digital cameras in the same form factor,

08:45:38 1 correct?

08:45:38 2 A. My answer didn't totally agree with that.

08:45:46 3 MR. SHEASBY: Your Honor, may I now publish his

08:45:48 4 response?

08:45:49 5 THE COURT: You may.

08:45:50 6 MR. SHEASBY: Mr. Huynh, let's go to 66, Lines 9

08:45:54 7 through 15.

08:45:55 8 Q. (By Mr. Sheasby) So I asked you the question about

08:46:05 9 2006: There are at least some smartphones and personal

08:46:09 10 digital assistants that combine the general purpose

08:46:12 11 computer and digital camera in the same form factor.

08:46:15 12 Do you see that, sir?

08:46:16 13 A. Yes.

08:46:16 14 Q. And you said: Not having really analyzed it a lot, I

08:46:20 15 would generally agree?

08:46:21 16 A. That's what I said, yes.

08:46:21 17 Q. Okay. So you've been elected by Wells Fargo to speak

08:46:23 18 on the subject of PDAs as they existed in 2006, correct?

08:46:26 19 That's one of the things you talked about under oath to the

08:46:29 20 ladies and gentlemen of the jury yesterday?

08:46:29 21 A. I did.

08:46:30 22 Q. And yesterday -- and when I just asked you the

08:46:33 23 question, whether PDAs existed and smartphones existed in

08:46:37 24 2006 that integrated digital cameras and general purpose

08:46:39 25 computers, you said you disagree, correct?

08:46:41 1 A. I disagree with part of that.

08:46:43 2 Q. Sir, the reality is that as Wells Fargo's expert, you

08:46:48 3 did not analyze the question of smartphones and PDAs that

08:46:54 4 existed in 2006 and whether they had digital purpose

08:46:59 5 cameras, correct?

08:46:59 6 A. I'm sorry. Say it again.

08:47:00 7 Q. You did not analyze the question of whether smartphones

08:47:03 8 and PDAs in 2006 had integrated digital cameras, correct?

08:47:07 9 A. No, I didn't analyze -- I didn't analyze the market and

08:47:13 10 what it had in it.

08:47:16 11 Q. And you understand that to interpret the meaning of a

08:47:18 12 patent, you have to understand it from the standpoint of a

08:47:21 13 person of ordinary skill in the art, correct?

08:47:23 14 A. I understand.

08:47:23 15 Q. And a person of ordinary skill in the art would know

08:47:36 16 about the state of the market in 2006, fair?

08:47:38 17 A. Possibly.

08:47:42 18 Q. But you don't, fair?

08:47:43 19 A. I do some of the market.

08:47:45 20 Q. Well, in reality, in 2006, persons of ordinary skill in

08:47:51 21 the art knew that digital personal assistants and other

08:47:55 22 portable devices, laptops, for example, had integrated

08:47:58 23 digital cameras with general purpose computing power.

08:48:02 24 Generally that's correct, fair?

08:48:04 25 A. There were devices -- some devices out there like that,

08:48:06 1 yes.

08:48:06 2 MR. SHEASBY: Objection, nonresponsive, Your  
08:48:09 3 Honor.

08:48:09 4 THE COURT: Overruled.

08:48:09 5 Q. (By Mr. Sheasby) Sir, you agree that in 2006, it's  
08:48:13 6 generally correct that persons of skill in the art knew  
08:48:15 7 that personal digital assistants in other portable devices,  
08:48:19 8 laptops, for example, had integrated digital cameras with  
08:48:24 9 general purpose computing power, fair?

08:48:26 10 A. I could agree with that.

08:48:29 11 Q. When the patent --

08:48:51 12 MR. SHEASBY: Mr. Huynh, can you pull up the '605  
08:48:54 13 patent, Tab -- PX-1186, Page 16? And pull up next to it  
08:49:10 14 Column 6, Lines 39 through 56. And it's -- of 1186,  
08:49:55 15 Mr. Huynh, if that's of any assistance to you. And it's  
08:50:06 16 Column 6, Lines 39 through 56.

08:50:18 17 Q. (By Mr. Sheasby) So we're looking at passages from the  
08:50:20 18 '605 patent, correct?

08:50:21 19 A. That's correct.

08:50:22 20 Q. And Figure 3 of the '605 patent is discussed in the  
08:50:30 21 passage at right on the screen, correct?

08:50:32 22 A. That's correct.

08:50:32 23 Q. And this passage talks about the fact that the image  
08:50:36 24 capture device itself can have a general purpose processing  
08:50:41 25 unit, correct?

08:50:42 1 A. That's what the passage says.

08:50:47 2 Q. So the patent teaches a box, correct, in Figure 3?

08:50:55 3 A. Yes.

08:50:55 4 Q. Within that box there's an image capture apparatus,

08:50:59 5 correct?

08:50:59 6 A. That's correct.

08:50:59 7 Q. And within that box is a general purpose processing

08:51:03 8 unit, correct?

08:51:03 9 A. Yes.

08:51:06 10 Q. And the specification also discussed the fact that the

08:51:10 11 image capture device with the general purpose computer can

08:51:12 12 be in direct connection with the server, correct?

08:51:14 13 A. Where is it showing that? I'm sorry. Oh.

08:51:24 14 Q. Image capture device 300 --

08:51:26 15 A. Right, right. Okay. It says may include

08:51:32 16 communications, right?

08:51:34 17 Q. Yes.

08:51:34 18 A. Okay. Yes, I see that.

08:51:37 19 Q. So we agree on one thing. Figure 3 is describing image

08:51:41 20 capture device, correct?

08:51:41 21 A. That's correct.

08:51:42 22 Q. The image capture device is an image capture apparatus,

08:51:46 23 correct?

08:51:46 24 A. Yes.

08:51:48 25 Q. That would include, for example, a camera lens,

08:51:51 1 correct?

08:51:51 2 A. Yes.

08:51:52 3 Q. It also includes a general purpose processor, correct?

08:51:56 4 A. Processing unit, it says.

08:52:02 5 Q. The answer to my question is yes?

08:52:06 6 A. Ask your question again.

08:52:08 7 Q. The passage talks about the fact that the image capture

08:52:13 8 device itself can have a general purpose processing unit,

08:52:16 9 correct?

08:52:16 10 A. I disagree.

08:52:18 11 Q. Okay. Why don't you turn to Volume -- why don't you

08:52:21 12 turn to Tab 3 again, 69, 10 through 16.

08:52:33 13 A. I'm sorry, page, please?

08:52:33 14 Q. Page 69, Lines 10 through 16, Mr. Saffici.

08:52:41 15 A. I see my testimony.

08:52:42 16 Q. The passage talks about the fact that the image capture

08:52:48 17 device itself can have a general purpose processing unit,

08:52:51 18 correct? That's what it shows on Figure 3?

08:52:52 19 A. Yeah, my testimony was yes.

08:52:54 20 Q. So just for the ladies and gentlemen of the jury, under

08:52:57 21 oath in deposition, you admitted that Figure 3 describes a

08:53:03 22 box in which there is an image capture apparatus and a

08:53:08 23 general purpose computer -- withdraw the question.

08:53:09 24 For the ladies and gentlemen of the jury, you

08:53:13 25 admitted at your deposition that Figure 3, the processing

08:53:18 1 unit 302, can be a general purpose computer, fair?

08:53:20 2 A. That was my testimony.

08:53:22 3 MR. JOHNSON: Objection, Your Honor.

08:53:23 4 Mischaracterizes the testimony. That's not what he says  
08:53:28 5 general purpose computer -- he's been saying general  
08:53:31 6 purpose processor.

08:53:31 7 THE COURT: Well, he's already answered the  
08:53:34 8 question, Mr. Johnson. You can review it with him when you  
08:53:38 9 redirect.

08:53:39 10 MR. JOHNSON: Thank you, Your Honor.

08:53:40 11 Q. (By Mr. Sheasby) And in front of this jury just a  
08:53:43 12 couple minutes ago, you said the opposite, fair?

08:53:45 13 A. Am I able to explain?

08:53:55 14 MR. SHEASBY: Your Honor, can I ask him that he --  
08:53:58 15 can I request that you instruct the witness to answer the  
08:54:00 16 question?

08:54:01 17 THE WITNESS: Okay.

08:54:03 18 THE COURT: Restate the question. And then,  
08:54:06 19 Mr. Saffici, answer the question as it's presented. As  
08:54:09 20 I've made clear, Mr. Johnson is going to have a chance to  
08:54:12 21 review anything he thinks is important with you when he  
08:54:17 22 gets an opportunity to ask follow-up questions.

08:54:19 23 THE WITNESS: Yes, Your Honor.

08:54:19 24 THE COURT: So state your question.

08:54:22 25 Q. (By Mr. Sheasby) Figure 3, you testified under oath at

08:54:25 1 deposition, describes a general purpose processing unit --

08:54:29 2 general purpose processing unit, correct?

08:54:29 3 A. That's -- testimony is correct, yes.

08:54:31 4 Q. And you gave different testimony to the jury, correct?

08:54:34 5 A. Yes.

08:54:41 6 Q. Now, you talked about the '200 patent specification.

08:54:53 7 That's one of the earlier family members of the '681

08:54:56 8 patent, correct?

08:54:57 9 A. That's correct.

08:54:57 10 Q. And the '200 patent specification is identical to the

08:55:04 11 '681 patent specification, correct?

08:55:05 12 A. Say it again, please.

08:55:07 13 Q. The '200 patent specification is substantively

08:55:12 14 identical to the '681 patent?

08:55:13 15 A. Oh, yes, that -- that's correct, yes.

08:55:15 16 Q. So if there's something taught in this -- if you can

08:55:18 17 learn something from looking at the '200 patent

08:55:21 18 specification, you'll be able to learn that exact same

08:55:24 19 thing from looking at the '681 patent specification, fair?

08:55:27 20 A. That's correct.

08:55:29 21 Q. And why don't you turn to your deposition at Pages 9:22

08:55:54 22 through 10:1?

08:55:55 23 A. I'm sorry. Again, Mr. Sheasby?

08:55:57 24 Q. Sure. Page 9 --

08:56:00 25 A. Oh, 9.

08:56:01 1 Q. Lines 22 through Page 10.

08:56:12 2 A. Starting where again?

08:56:16 3 Q. Column -- Page 9, Line 22, through 10, Line 1.

08:56:35 4 MR. JOHNSON: Your Honor, I would object. There's  
08:56:37 5 no pending question for which the witness is being  
08:56:39 6 refreshed from recollection or impeachment.

08:56:42 7 THE COURT: Approach the bench, please.

08:56:50 8 (Bench conference.)

08:56:50 9 THE COURT: You're asking him to read a portion of  
08:56:53 10 his prior --

08:56:54 11 MR. SHEASBY: To refresh his -- his recollection,  
08:56:56 12 and then I'm going to ask him --

08:56:58 13 THE COURT: Are you -- you -- there's no reason to  
08:57:00 14 refresh his recollection unless he's indicated a lack of  
08:57:04 15 memory.

08:57:05 16 MR. SHEASBY: I'll proceed, Your Honor.

08:57:06 17 THE COURT: I mean, if he says I don't remember,  
08:57:08 18 then that's certainly appropriate.

08:57:09 19 MR. SHEASBY: Okay.

08:57:11 20 (Bench conference concluded.)

08:57:18 21 THE COURT: Let's proceed.

08:57:23 22 MR. SHEASBY: So let's pull up, Mr. Huynh, 1187,  
08:57:32 23 Claim 1. And let's pull up through the limitation -- the  
08:57:50 24 preamble and the first limitation and the second two  
08:57:58 25 limitations. Right there. That will be great. So let's

08:58:07 1 put that all together.

08:58:11 2 Q. (By Mr. Sheasby) So one of the opinions you gave to  
08:58:15 3 the ladies and gentlemen of the jury was that you don't  
08:58:17 4 believe that the limitation --

08:58:28 5 MR. JOHNSON: Your Honor, I would object. I  
08:58:31 6 believe Claim 1 of the '681 is not asserted.

08:58:34 7 MR. SHEASBY: I'll pull it down. We can go --  
08:58:37 8 let's go to Claim -- Claim 12.

08:58:42 9 THE COURT: That's sustained.

08:58:43 10 MR. JOHNSON: Thank you, Your Honor.

08:58:51 11 MR. SHEASBY: So let's pull up Claim 12, through a  
08:58:55 12 downloaded software application, Mr. Huynh.

08:59:01 13 Q. (By Mr. Sheasby) So we're looking at Claim 12 of the  
08:59:03 14 '681 patent. And what you told the ladies and gentlemen of  
08:59:07 15 the jury was that you don't think that the -- this -- these  
08:59:11 16 limitations are disclosed -- strike that.

08:59:17 17 You told the ladies and gentlemen of the jury you  
08:59:19 18 don't think these limitations are described in that common  
08:59:22 19 specification shared by the '200 patent and the '681  
08:59:26 20 patent, fair?

08:59:27 21 A. Yes, that's what I said.

08:59:28 22 Q. You gave the exact opposite testimony in your  
08:59:33 23 deposition, correct?

08:59:34 24 A. I don't recall.

08:59:37 25 Q. Turn to Volume 2 -- turn to Pages 9:22, through 10:1 in

08:59:45 1 your deposition.

08:59:46 2 A. Page 9, 20 --

08:59:49 3 Q. 22 through 10:1.

08:59:58 4 A. Yes, I see that.

08:59:59 5 Q. In your deposition, you testified under oath that every

09:00:04 6 limitation we see on the screen in Claim 12 is described --

09:00:10 7 described in that common specification shared by the '200

09:00:15 8 patent and the '681 patent, correct?

09:00:17 9 A. When we were talking about anticipation, yes.

09:00:20 10 MR. SHEASBY: Objection -- Your Honor, objection.

09:00:23 11 I move to strike. Non-responsive.

09:00:25 12 THE COURT: "Yes" is the correct answer. I'll

09:00:47 13 strike the portion of the response, except the word "yes."

09:00:54 14 Q. (By Mr. Sheasby) And, in fact, when I asked you the

09:00:59 15 question at your deposition whether the common

09:01:01 16 specification of the Oakes '200 patent and the '681 patent

09:01:06 17 describes the limitations on the screen before the ladies

09:01:10 18 and gentlemen of the jury, you just said: That's my

09:01:14 19 opinion, yes.

09:01:17 20 Correct?

09:01:18 21 A. That was my testimony.

09:01:20 22 Q. It was unqualified, correct?

09:01:22 23 A. At that point.

09:01:25 24 Q. No ifs, buts about it, correct?

09:01:30 25 A. Yes, that was my testimony.

09:01:31 1 Q. And so when the ladies and gentlemen of the jury go  
09:01:33 2 back to deliberate, it is fair for them to consider that  
09:01:36 3 under oath, represented by your counsel, in a deposition  
09:01:39 4 that you had the right to correct, you, without  
09:01:42 5 qualification, said that every single limitation on the  
09:01:46 6 screen right now, mobile device, digital camera,  
09:01:50 7 communication together is described in that common  
09:01:52 8 specification, correct? They're allowed to consider that?  
09:01:56 9 A. That was my testimony at that point, yes.  
09:02:05 10 Q. The common shared specification between the Oakes '200  
09:02:12 11 patent and the '681 patent describes a portable device  
09:02:16 12 comprising a general purpose computer, including a  
09:02:21 13 processor coupled to a memory, correct?  
09:02:22 14 A. I'm sorry. Repeat that, please.  
09:02:24 15 Q. Sure. The common specification, that 2000 [sic]  
09:02:29 16 specification, describes a portable device comprising a  
09:02:36 17 general purpose computer, including a processor coupled to  
09:02:38 18 memory, correct?  
09:02:38 19 A. Can -- can you tell me where you're -- in the  
09:02:44 20 specification you're reading from?  
09:02:45 21 Q. Sir, I'm -- I'm asking you your opinion as an expert.  
09:02:54 22 A. I disagree.  
09:02:55 23 Q. Turn to Volume 2 of your deposition, Lines 11, 14 --  
09:03:03 24 Page 11, 14 through 18.  
09:03:16 25 A. Yes, I see my testimony.

09:03:18 1 Q. Sir, it is your sworn opinion under oath that the  
09:03:23 2 common specification of the Oakes '200 patent and the '681  
09:03:26 3 patent describe a portable device comprising a general  
09:03:31 4 purpose computer, including a processor coupled to memory,  
09:03:38 5 correct?  
09:03:38 6 A. Yes.  
09:03:41 7 Q. Based on that testimony, it is not correct that the  
09:03:45 8 2006 specification only describes using a desktop or laptop  
09:03:49 9 computer connected to a separate camera, correct?  
09:03:52 10 A. Say it again, please.  
09:03:54 11 Q. Based on your testimony, it is not correct that the  
09:03:58 12 2006 specification only describes using a desktop or laptop  
09:04:05 13 computer connected to a separate camera, correct?  
09:04:05 14 A. Based on my testimony at that time, that's correct.  
09:04:10 15 Q. Now, you also talked about the Oakes '227 patent and  
09:04:26 16 the '605 patent, correct?  
09:04:31 17 A. Yes.  
09:04:32 18 Q. And those, once again, are in that same family. They  
09:04:36 19 have the same common specification, correct?  
09:04:37 20 A. '227 and '605.  
09:04:40 21 Q. If -- if you can learn something from looking at the  
09:04:43 22 '227 patent specification, you're going to be -- be able to  
09:04:46 23 learn the exact same thing by looking at that '681 patent  
09:04:49 24 specification, correct?  
09:04:50 25 A. That's incorrect.

09:04:53 1 Q. Let me --

09:04:54 2 A. I mean, I disagree. I apologize.

09:04:56 3 Q. Let me ask you the question. The -- and I withdraw the

09:04:58 4 question because it was improper.

09:05:01 5 The '227 patent specification and the '605 patent

09:05:06 6 specification are identical, correct?

09:05:07 7 A. That's correct, yes.

09:05:08 8 Q. And, in fact, you conclude that the specification of

09:05:29 9 the '227 patent teaches that a handheld device may include

09:05:34 10 a digital camera, correct?

09:05:34 11 A. Can you point me to where I said that, please?

09:05:41 12 Q. Why don't you turn to Tab 4 --

09:05:43 13 A. Tab 4.

09:05:44 14 Q. -- which is your report.

09:05:50 15 A. Okay.

09:05:50 16 Q. Paragraph 209 of your report.

09:05:59 17 A. 209, right?

09:06:03 18 Q. Yes, sir.

09:06:50 19 A. And your question again was?

09:06:51 20 Q. So you talk about what the Oakes '227 patent, quote,

09:06:56 21 teaches, correct?

09:06:57 22 A. That's correct.

09:06:57 23 Q. The Oakes '227 patent is the exact same specification

09:07:01 24 as the '605 patent, correct?

09:07:02 25 A. Yes.

09:07:02 1 Q. And you -- you agree that the Oakes '227 patent teaches  
09:07:06 2 that the handheld device may include a digital camera,  
09:07:10 3 correct?  
09:07:10 4 A. That is in my report, yes.  
09:07:11 5 Q. So in your report, you concluded that the Oakes '227  
09:07:17 6 patent, which is the exact same specification as the '605  
09:07:20 7 patent, teaches the use of a handheld device that may  
09:07:25 8 include a digital camera, correct?  
09:07:26 9 A. Yes, it says that.  
09:07:34 10 Q. Mr. Saffici, would it be fair to say that after the  
09:07:42 11 conversation we had yesterday and the conversation we had  
09:07:47 12 this morning, that perhaps it's not as clear as you once  
09:07:51 13 thought as to what's disclosed in the patents-in-suit?  
09:07:54 14 Would that be a fair thing for someone to take away from  
09:07:58 15 our conversation?  
09:07:58 16 A. I'm sorry, say -- say that again, please.  
09:08:01 17 Q. Do you think it'd be fair to take from our  
09:08:05 18 conversations over the last two days on this subject that  
09:08:10 19 what's in the specification is not necessarily something  
09:08:13 20 that is clearly in your mind right now?  
09:08:15 21 A. I believe it's clearly in my mind.  
09:08:19 22 Q. And what's clearly in your mind is that in your report,  
09:08:27 23 you said that the specification teaches that the handheld  
09:08:30 24 device may include a digital camera, correct?  
09:08:33 25 A. I did say that, yes.

09:08:35 1 Q. Mr. Saffici, you did not identify any third-party art  
09:08:48 2 that calls into question the novelty of either the '681  
09:08:58 3 patent or '605 patent, correct?  
09:09:05 4 A. I disagree.  
09:09:06 5 Q. Why don't you turn to your same deposition, Lines 23, 6  
09:09:15 6 through 11?  
09:09:29 7 A. I'm sorry, what were the lines again?  
09:09:31 8 Q. 23, Lines 6 through 11.  
09:09:52 9 A. Yeah, I see what I said.  
09:09:53 10 Q. Sir, you testified under oath that you do not identify  
09:09:56 11 any third-party art that anticipates or renders obvious the  
09:10:00 12 '681 and '605 patents, correct?  
09:10:01 13 A. Can I -- can I ask you to clarify third party?  
09:10:11 14 Q. Third party would exclude USAA's patents.  
09:10:15 15 A. Okay. That's the confusion, sorry.  
09:10:18 16 Q. So I want to put aside the theory that you have on the  
09:10:21 17 Oakes '200 and Oakes '227 patent.  
09:10:24 18 A. Right.  
09:10:25 19 Q. I'm talking about what folks -- what other folks did --  
09:10:27 20 A. Okay.  
09:10:27 21 Q. -- what Wells Fargo did or all those other companies  
09:10:30 22 you talked about in your direct. You don't identify any  
09:10:32 23 third party, Wells Fargo or otherwise, that has prior art  
09:10:36 24 that anticipates or renders obvious the patents-in-suit in  
09:10:40 25 this case, correct?

09:10:40 1 A. That's correct.

09:10:41 2 Q. And you did a study on that, correct?

09:10:42 3 A. I looked, yes.

09:10:43 4 Q. You don't identify any system, any design anywhere in

09:10:49 5 the world that anticipates or renders obvious the '605 or

09:10:53 6 '681 patent, correct?

09:10:53 7 A. That was my testimony then and now.

09:10:55 8 Q. And, for example, you looked at Wells Fargo's --

09:10:57 9 THE COURT: Let him finish his answer,

09:10:59 10 Mr. Sheasby.

09:10:59 11 MR. SHEASBY: I apologize, Your Honor.

09:11:01 12 A. All I was saying was that was in my answer in the

09:11:05 13 testimony, and it's still my answer.

09:11:07 14 Q. (By Mr. Sheasby) And you looked at Wells Fargo's CEO

09:11:10 15 Desktop system, correct, that system that uses the

09:11:14 16 specialized scanner and you analyzed that, correct?

09:11:16 17 A. Yes.

09:11:26 18 MR. SHEASBY: Now, why don't we -- Mr. Huynh,

09:11:30 19 let's go to PX-1187, Page 27, and let's look at Claim 12.

09:11:44 20 Claim 12, Mr. Huynh. Let's go ahead and pull that up --

09:11:50 21 let's pull up the entire claim, if you would.

09:11:53 22 Q. (By Mr. Sheasby) Now, Claim 12 describes a system for

09:11:57 23 allowing a customer to deposit a check using the camera's

09:12:00 24 own mobile device with a digital camera, correct? Let me

09:12:04 25 reask the question.

09:12:05 1 The '681 patent, Claim 12, describes a system for  
09:12:08 2 allowing a customer to deposit a check using the customer's  
09:12:11 3 own mobile device with a digital camera, correct?  
09:12:13 4 A. That's correct -- that's correct.  
09:12:15 5 THE COURT: Mr. Sheasby, you are going to have to  
09:12:17 6 slow down.  
09:12:17 7 MR. SHEASBY: Yes, Your Honor.  
09:12:18 8 THE COURT: It does no good for you to ask things  
09:12:21 9 so quickly that neither the Court nor the jury can follow  
09:12:25 10 you. Slow down, please.  
09:12:28 11 MR. SHEASBY: Thank you, Your Honor.  
09:12:29 12 Q. (By Mr. Sheasby) At your deposition, that's described  
09:12:34 13 as MRDC, correct?  
09:12:35 14 A. That mobile remote deposit capture, yes.  
09:12:40 15 Q. The '681 patent, Claim 12, describes what's known as  
09:12:47 16 MRDC, correct, mobile remote deposit capture?  
09:12:51 17 A. Yes.  
09:12:51 18 Q. At your deposition, you were unable to think of any way  
09:12:55 19 of implementing mobile remote deposit capture, other than  
09:13:00 20 what's recited in Claim 12 of the '681 patent, correct?  
09:13:03 21 A. I don't recall.  
09:13:04 22 Q. Why don't you turn to Page 122, Lines 7 through 15?  
09:13:10 23 A. 122 of my deposition?  
09:13:12 24 Q. Yes, sir.  
09:13:13 25 A. I'm sorry, lines again, please?

09:13:24 1 Q. Yes, sir. Lines 7 through 15.

09:13:43 2 A. Okay. I read my deposition.

09:13:45 3 Q. Sir, at your deposition, you were unable to think of

09:13:49 4 any way of implementing mobile remote deposit capture other

09:13:52 5 than what's recited in Claim 12 of the '681 patent,

09:13:56 6 correct?

09:13:56 7 A. You didn't actually categorize my answers the way it's

09:14:03 8 in my testimony.

09:14:04 9 Q. Sir, at your deposition, you couldn't answer the

09:14:08 10 question as to whether there is any other way of

09:14:10 11 implementing mobile remote deposit capture, other than

09:14:13 12 what's described in Claim 12, correct?

09:14:15 13 A. That's not totally correct.

09:14:23 14 Q. At your -- in your trial testimony, did you describe to

09:14:27 15 the jury any alternative method of doing mobile remote

09:14:31 16 deposit capture beyond what's at issue -- what's described

09:14:33 17 in Claim 12?

09:14:35 18 A. Here at trial, you said?

09:14:36 19 Q. Yes.

09:14:37 20 A. No, I didn't.

09:14:50 21 Q. And you are an expert in remote deposit capture,

09:14:50 22 correct?

09:14:50 23 A. That's one of my areas of expertise.

09:14:53 24 Q. And you've been retained on this matter for close to 11

09:14:59 25 months, correct, sir?

09:15:01 1 A. That's correct.

09:15:01 2 Q. Now, you don't disagree -- you don't disagree that all  
09:15:12 3 the claims of the patents-in-suit require the image that is  
09:15:14 4 captured is in a form sufficient to allow money to be  
09:15:17 5 credited to an account, correct?

09:15:19 6 A. I agree.

09:15:19 7 Q. And for a check image to be used as a substitute check  
09:15:23 8 to be the legal equivalent of the actual physical check,  
09:15:26 9 the image has to be of sufficient quality such that it's  
09:15:29 10 accurately representing all the images on the original  
09:15:31 11 check, correct?

09:15:34 12 A. That's correct.

09:15:34 13 Q. And the claims of the '605 and '681 patent talk -- talk  
09:15:41 14 about displaying a graphical illustration to assist the  
09:15:44 15 user in the digital camera capture process, correct?

09:15:46 16 A. That's part of Claim -- of Claim 12, yes.

09:15:51 17 Q. And it talks about giving instructions to the user to  
09:15:53 18 ensure that the image is captured properly, correct?

09:15:58 19 A. There's some instructions identified there.

09:16:02 20 THE COURT: Approach the bench, counsel.

09:16:04 21 (Bench conference.)

09:16:10 22 THE COURT: You are super fast. Faster than  
09:16:16 23 you've been this whole trial. I don't know how much  
09:16:19 24 caffeine you had this morning, but you have got to slow  
09:16:22 25 down.

09:16:23 1 MR. SHEASBY: I understand, Your Honor.

09:16:24 2 THE COURT: I don't think the jury is following

09:16:27 3 your questions. I'm having trouble keeping up with them.

09:16:31 4 It's a burden on the Court staff to take it down. You're

09:16:35 5 going to have to slow down.

09:16:37 6 MR. SHEASBY: I will, Your Honor.

09:16:38 7 THE COURT: All right.

09:16:38 8 MR. SHEASBY: Thank you, Your Honor.

09:16:39 9 THE COURT: All right. Let's proceed.

09:16:40 10 (Bench conference concluded.)

09:16:46 11 THE COURT: Let's proceed.

09:16:47 12 Q. (By Mr. Sheasby) The patent specification talks --

09:16:50 13 talked about giving guidance and instructions to the user

09:16:54 14 so that the -- an image of sufficient quality can be

09:16:56 15 captured, fair?

09:16:58 16 A. That doesn't really talk about -- can I just say I

09:17:14 17 disagree with you.

09:17:16 18 Q. Can you turn to Page 166, Lines 2 through 11 of your

09:17:20 19 deposition, sir?

09:17:50 20 A. I've read it.

09:17:52 21 Q. Sir, the specifications talk about giving guidance and

09:18:04 22 instructions to the user so that an image of sufficient

09:18:09 23 quality will be captured, correct?

09:18:10 24 A. That was my testimony.

09:18:11 25 Q. The claims talk about the same, correct?

09:18:13 1 A. That was my testimony.

09:18:16 2 Q. You did nothing to determine whether the USAA patents

09:18:19 3 have contributed to the commercial success of mobile remote

09:18:23 4 deposit capture, correct?

09:18:23 5 A. I was not asked to do that.

09:18:34 6 Q. Well, in your report, you stated that you were not

09:18:36 7 aware of any evidence of commercial success relating to the

09:18:39 8 specific systems and methods claimed in the asserted

09:18:44 9 patents, correct? That's what you wrote in your report?

09:18:46 10 A. Can you show me where that was, please?

09:18:48 11 Q. Why don't you turn to 227 -- the same deposition,

09:18:53 12 227:23 to 228:6?

09:19:12 13 A. What was the lines again, please?

09:19:15 14 Q. 227, Lines 23, to 228, Line 6.

09:19:27 15 A. Yes, I've read that.

09:19:31 16 Q. Sir, in your report, you stated that you're not aware

09:19:34 17 of any evidence of commercial success relating to the

09:19:36 18 specific systems and claims -- methods claimed in the

09:19:40 19 asserted patents, correct?

09:19:42 20 A. That is what I said.

09:19:43 21 Q. But the reality is you did nothing whatsoever to

09:19:47 22 investigate that question, correct?

09:19:48 23 A. I don't believe I did any extensive analysis.

09:19:53 24 Q. Sir, you didn't do any --

09:19:55 25 A. I didn't any --

09:19:56 1 Q. You didn't do any analysis?

09:19:58 2 A. Didn't do any.

09:20:03 3 MR. SHEASBY: Let's go to PX-7, Page 13.

09:20:07 4 Q. (By Mr. Sheasby) This is Tab 26 in your binder,

09:20:08 5 Mr. Saffici.

09:20:08 6 A. I'm sorry, which?

09:20:09 7 Q. PX-7, Lines 13. This is Tab 7 in your -- Tab 26 in

09:20:14 8 your binder which you're absolutely welcome to look at, but

09:20:17 9 it will also be on the screen?

09:20:19 10 A. You said 7?

09:20:21 11 Q. Tab 26.

09:20:22 12 A. Tab 26?

09:20:23 13 Q. That will be in Binder No. 3.

09:20:26 14 MR. SHEASBY: Let's put it up, Mr. Huynh. 7.

09:20:39 15 A. That was Tab 26, right?

09:20:43 16 Q. (By Mr. Sheasby) Yeah.

09:20:47 17 A. Is that right, Tab 26?

09:20:48 18 Q. Tab 27 --

09:20:49 19 A. Oh, 27?

09:20:50 20 Q. Yes, sir.

09:20:51 21 MR. SHEASBY: And we'll put it up on the screen.

09:20:54 22 Page 7, Mr. Huynh.

09:20:57 23 A. Wait a minute. I think these are mislabeled.

09:21:02 24 Q. (By Mr. Sheasby) Page 13, sorry.

09:21:04 25 A. It's really Tab 26.

09:21:05 1 Q. It is Tab 26.

09:21:07 2 A. Okay. I'm there.

09:21:14 3 MR. SHEASBY: Is this PX-7, Mr. Huynh?

09:21:38 4 Q. (By Mr. Sheasby) It's on the screen, Mr. Saffici.

09:21:39 5 A. Yeah, I see it.

09:21:40 6 Q. So this is a Wells Fargo presentation that talks about

09:21:44 7 MRDC as being table stakes, correct?

09:21:46 8 A. That's what the title says, yes.

09:21:48 9 Q. And you understand that Wells Fargo is stating that

09:21:51 10 MRDC is a table stakes capability, correct?

09:21:54 11 A. That's the heading, yes.

09:21:55 12 Q. And you can see that one definition of table stakes

09:21:59 13 capability means that it's a capability one must have to

09:22:03 14 compete, correct?

09:22:04 15 A. I guess that's an acceptable definition.

09:22:10 16 Q. Sir, is it fair for the ladies and gentlemen of the

09:22:16 17 jury to consider the fact that you're an RDC expert?

09:22:19 18 A. Table stakes has nothing to do with RDC. That's not a

09:22:25 19 term associated with RDC.

09:22:27 20 MR. SHEASBY: Your Honor, non-responsive.

09:22:32 21 A. Ask the question again, please.

09:22:34 22 THE COURT: Just a minute.

09:22:35 23 THE WITNESS: Oh, sorry.

09:22:36 24 THE COURT: I'll sustain the objection.

09:22:57 25 Restate the question, counsel.

09:22:57 1 Q. (By Mr. Sheasby) Sir, you -- you told the jury that  
09:22:59 2 you're an expert in RDC, correct?  
09:23:01 3 A. That's among my expertise.  
09:23:03 4 Q. Sir, and you concede that one definition of table  
09:23:07 5 stakes is a capability that one must have to compete,  
09:23:09 6 correct?  
09:23:09 7 A. Is that on the screen? That's what the yellow  
09:23:16 8 highlight is?  
09:23:17 9 THE COURT: You need to answer the question,  
09:23:19 10 Mr. Saffici, whether it's on the screen or not.  
09:23:21 11 THE WITNESS: Okay.  
09:23:23 12 A. Again, Mr. Sheasby. Sorry.  
09:23:26 13 Q. (By Mr. Sheasby) It's fair for the jury to conclude  
09:23:29 14 that one reasonable interpretation of Wells Fargo's  
09:23:31 15 description of MRDC as table stakes is that it is a  
09:23:37 16 capability that it must have to compete, correct?  
09:23:39 17 A. I don't feel I could answer that.  
09:23:47 18 Q. Why don't we turn to Tab 35 in your binder?  
09:24:11 19 A. I'm there.  
09:24:12 20 Q. And why don't we turn to Paragraph 91?  
09:24:25 21 A. I'm there.  
09:24:25 22 Q. Now, Paragraph 91 of the binder is a portion of  
09:24:35 23 Mr. Gerardi's expert report, correct?  
09:24:38 24 A. I see that from the cover page.  
09:24:40 25 Q. Mr. Gerardi is Wells Fargo's damages expert in this

09:24:42 1 case, correct?

09:24:44 2 A. That's correct.

09:24:44 3 Q. And he lists a set of bullet points of technical

09:24:50 4 modifications, correct?

09:24:51 5 A. Yes.

09:24:53 6 Q. You did nothing whatsoever to investigate whether

09:24:56 7 Mr. Gerardi's proposed technical modifications to Wells

09:25:00 8 Fargo's design were commercially viable, correct?

09:25:03 9 A. I didn't have input into his report, no.

09:25:10 10 MR. SHEASBY: Objection, nonresponsive.

09:25:11 11 THE WITNESS: Okay. That wasn't the answer to the  
09:25:13 12 question.

09:25:14 13 Q. (By Mr. Sheasby) You did nothing --

09:25:15 14 THE COURT: Just -- just -- just a minute. We're  
09:25:17 15 going to get this examination back on track.

09:25:23 16 You're going to wait until he's finished before  
09:25:26 17 you ask another question.

09:25:27 18 And you're not going to keep talking while he's  
09:25:29 19 asking the question. And the answer needs to respond to  
09:25:31 20 the question. And if you don't understand, it's perfectly  
09:25:34 21 fine to say "I don't understand" or give a yes or a no or  
09:25:38 22 an explanation, whatever the question's called for, but go  
09:25:42 23 no further than what the question calls for.

09:25:46 24 And, Mr. Sheasby, you're going to have to slow  
09:25:48 25 down and let the witness have time to respond before you

09:25:51 1 move on to the next question.

09:25:52 2 Let's both of you try to see if we can do this in  
09:25:56 3 a more orderly fashion going forward.

09:25:57 4 THE WITNESS: Yes, Your Honor.

09:25:58 5 THE COURT: All right. Counsel, ask your next  
09:26:01 6 question.

09:26:01 7 Q. (By Mr. Sheasby) You did nothing to investigate  
09:26:05 8 whether there are any commercially viable non-infringing  
09:26:08 9 alternatives to the patents-in-suit in this case, correct?

09:26:12 10 A. That's correct.

09:26:27 11 Q. And you did absolutely nothing to investigate whether  
09:26:30 12 Wells Fargo had the focused R&D capability that would allow  
09:26:34 13 it to create an alternative to USAA's MRDC system, correct?

09:26:38 14 A. That's correct.

09:26:39 15 Q. And you are the only remote deposit capture expert from  
09:26:46 16 Wells Fargo that the jury is ever going to hear from at  
09:26:48 17 this trial, correct?

09:26:49 18 A. That's correct.

09:26:51 19 MR. SHEASBY: I pass the witness, Your Honor.

09:26:53 20 THE COURT: Redirect by the Defendant?

09:26:54 21 MR. JOHNSON: Yes, Your Honor. Sorry, Your Honor,  
09:27:10 22 I need just a moment to reposition all this.

09:27:12 23 THE COURT: That's fine. Take a moment.

09:27:14 24 MR. JOHNSON: Thank you.

09:27:39 25 THE COURT: When you're ready, you may proceed.

09:27:41 1 MR. JOHNSON: Thank you, Your Honor. May it  
09:27:41 2 please the Court.

09:27:41 3 REDIRECT EXAMINATION

09:27:42 4 BY MR. JOHNSON:

09:27:42 5 Q. Good morning, Mr. Saffici.

09:27:45 6 A. Good morning, Mr. Johnson. How are you?

09:27:48 7 Q. Good.

09:27:48 8 I want to visit with you about a couple of things  
09:27:50 9 that Mr. Sheasby has been talking to you about, and we're  
09:27:53 10 going to talk about some very important foundational things  
09:27:58 11 here upfront.

09:27:59 12 Mr. Saffici, have you ever met really intelligent  
09:28:02 13 people who got that way through work, not through a college  
09:28:04 14 degree or going to some Ivy League school?

09:28:15 15 A. I can't recall.

09:28:16 16 Q. Well, sir, people -- some people go to school and they  
09:28:20 17 get their education through college, right?

09:28:20 18 A. That's correct.

09:28:21 19 Q. Other people, like you, go out and work for 53 years  
09:28:24 20 and acquire expertise. Are you aware of that?

09:28:27 21 A. I am.

09:28:27 22 Q. Okay. In fact, that's what you've done, right, sir?

09:28:33 23 A. That's correct.

09:28:33 24 Q. Now, yesterday, Mr. Saffici, you were asked about the  
09:28:37 25 fact that despite your 53 years of experience and having

09:28:41 1 been qualified as an expert by this Court, whether you met  
09:28:45 2 a definition that Mr. Sheasby gave you of a person of  
09:28:49 3 ordinary skill in the art. Do you remember that right at  
09:28:50 4 the beginning?

09:28:51 5 A. Yes, I do.

09:28:52 6 Q. Okay. Well, I want to take a look at the questions  
09:28:55 7 that you were asked, sir.

09:28:57 8 Do you remember that he referred you to  
09:29:02 9 Dr. Villasenor's report?

09:29:04 10 A. Yes.

09:29:05 11 Q. Said it was behind you in some of these stacks?

09:29:08 12 A. Yes.

09:29:22 13 MR. JOHNSON: Can I have the document camera?  
09:29:25 14 Thank you.

09:29:34 15 Q. (By Mr. Johnson) Okay. Ask you to go to  
09:29:41 16 Dr. Villasenor's report, Paragraph 16. Do you see that?

09:29:48 17 A. Yes.

09:29:48 18 Q. Now, he gave you some very specific instructions about  
09:29:51 19 how you should read that report, didn't he?

09:29:53 20 A. I believe so.

09:29:54 21 Q. Okay. Number one, he said do not read it out loud?

09:30:00 22 A. Yes.

09:30:01 23 Q. Okay. Second thing he asked you to do was what?

09:30:06 24 A. Just the first sentence.

09:30:09 25 Q. Okay. The first sentence of Paragraph 16. Did you do

09:30:11 1 that?

09:30:12 2 A. Yes, I did.

09:30:13 3 Q. Okay. And when Mr. -- when you read that first  
09:30:22 4 sentence, Mr. Sheasby read it to you, you candidly agreed  
09:30:26 5 with the definition that was stated in that first sentence,  
09:30:29 6 right?

09:30:29 7 A. I did.

09:30:29 8 MR. SHEASBY: Objection, Your Honor, these  
09:30:31 9 questions are leading.

09:30:33 10 THE COURT: Sustained as to leading.

09:30:37 11 Q. (By Mr. Johnson) Did you agree with Mr. Sheasby's  
09:30:39 12 characterization of the first sentence of Mr. Villasenor's  
09:30:44 13 report that you read?

09:30:46 14 A. I'm sorry, Mr. Johnson, again.

09:30:50 15 Q. Did you candidly agree with him about the first  
09:30:53 16 sentence of Mr. Villasenor's report that he read to you?

09:30:57 17 A. I did agree with him.

09:30:58 18 Q. Okay. Well, sir --

09:31:00 19 MR. JOHNSON: Mr. Bakale, can we have  
09:31:05 20 Mr. Villasenor's report, Paragraphs 15 and 16?

09:31:08 21 MR. SHEASBY: Your Honor, object. He can't  
09:31:12 22 publish a report. That's hearsay. I -- I was not allowed  
09:31:12 23 to publish it either. If he wants to show that report to  
09:31:15 24 Mr. Saffici -- reports aren't evidence to be published with  
09:31:17 25 the jury.

09:31:19 1 THE COURT: What's your response, Mr. Johnson?

09:31:21 2 MR. JOHNSON: I'm not offering it for the truth of

09:31:23 3 the matter asserted. This has been discussed before the

09:31:25 4 witness. I'm offering it for context of the testimony.

09:31:34 5 THE COURT: Approach the bench, counsel.

09:31:35 6 (Bench conference.)

09:31:42 7 THE COURT: I think you're going to have to refer

09:31:44 8 the witness to the areas that you believe are appropriate

09:31:49 9 under the doctrine of optional completeness, and if he says

09:31:53 10 that additional text would cause him to change his answer,

09:31:56 11 then you can publish it.

09:31:58 12 MR. SHEASBY: Your Honor, I'm concerned --

09:32:01 13 THE COURT: That's like impeachment in reverse.

09:32:02 14 MR. SHEASBY: I'm concerned that the suggestion

09:32:04 15 that I didn't show it to the jury, I instructed him not to

09:32:07 16 read it out loud because that would have been a violation

09:32:09 17 of the Court's rulings.

09:32:12 18 THE COURT: That's not anything that rises to the

09:32:13 19 level of an objection at this point.

09:32:15 20 MR. SHEASBY: Thank you, Your Honor.

09:32:15 21 THE COURT: Okay.

09:32:20 22 (Bench conference.)

09:32:22 23 THE COURT: Let's proceed.

09:32:26 24 MR. JOHNSON: May I approach, Your Honor, please?

09:32:28 25 THE COURT: You may.

09:32:30 1 Q. (By Mr. Johnson) Mr. Saffici, will you read the first  
09:32:47 2 and the second sentence of Mr. Villasenor's Paragraph 16?  
09:32:51 3 A. To myself?  
09:32:52 4 Q. Yes.  
09:33:06 5 A. I've read the first and second sentences.  
09:33:09 6 Q. Do your answers -- do you -- are all your answers  
09:33:14 7 regarding Mr. Villasenor's definition of person of ordinary  
09:33:19 8 skill in the art and you, remain true, in light of the  
09:33:23 9 second sentence?  
09:33:25 10 A. No, they do not remain true.  
09:33:28 11 MR. JOHNSON: May I now publish this to the jury,  
09:33:30 12 Your Honor?  
09:33:30 13 THE COURT: You can recover the document from the  
09:33:32 14 witness.  
09:33:32 15 MR. JOHNSON: Thank you. May I publish it?  
09:33:42 16 THE COURT: You may.  
09:33:43 17 MR. JOHNSON: Thank you, Your Honor.  
09:33:44 18 Can we have it up? I don't want to...  
09:33:49 19 Thank you.  
09:33:50 20 Q. (By Mr. Johnson) So the jury is clear, Mr. Sheasby  
09:33:53 21 read to you which -- or told you to read only which  
09:33:56 22 first -- which sentence?  
09:33:57 23 A. Paragraph 16, first sentence that ends there with the  
09:34:01 24 word "imaging."  
09:34:03 25 Q. Right. And then you all had a long colloquy about

09:34:08 1 others that might meet that, but did you get the  
09:34:10 2 implication that he didn't think you met that?  
09:34:13 3 A. Yes, definitely.  
09:34:14 4 Q. Now, sir, can you read the second sentence that he  
09:34:18 5 wouldn't let you read?  
09:34:19 6 A. You want me to read it out loud?  
09:34:22 7 Q. Yes, sir.  
09:34:22 8 A. Oh. It says: More work experience could compensate  
09:34:26 9 for less education, and vice versa.  
09:34:29 10 Q. Now, Mr. Sheasby didn't read that sentence to you, did  
09:34:36 11 he?  
09:34:36 12 A. No, he did not.  
09:34:38 13 Q. Mr. Sheasby [sic], do you think 53 years in the real  
09:34:42 14 world would be more work experience that could accomplish  
09:34:44 15 that --  
09:34:44 16 THE COURT: Just a minute, counsel.  
09:34:45 17 What are you up on your feet for, Mr. Sheasby.  
09:34:45 18 MR. SHEASBY: Objection, this is leading, Your  
09:34:55 19 Honor.  
09:34:55 20 MR. JOHNSON: Given what has gone on, Your Honor,  
09:34:58 21 I would ask for leniency.  
09:35:02 22 THE COURT: Restate your question, Mr. Johnson.  
09:35:04 23 Q. (By Mr. Johnson) Mr. Saffici, how many years of  
09:35:09 24 real-world experience do you have?  
09:35:10 25 A. 53.

09:35:10 1 Q. All in the areas that we're talking about?

09:35:12 2 A. That's correct.

09:35:13 3 Q. Okay. Can you tell the jury whether having 53 years

09:35:18 4 experience might be a substitute, in your opinion, for all

09:35:23 5 these college degrees that were talked about by

09:35:25 6 Mr. Sheasby?

09:35:26 7 A. I believe it's fair to consider it as a substitute.

09:35:31 8 Q. And, sir, with the benefit -- and Mr. Sheasby -- did

09:35:37 9 Mr. Sheasby beat you up about not meeting that definition?

09:35:40 10 MR. SHEASBY: Your Honor, objection. This is

09:35:43 11 improper.

09:35:43 12 THE COURT: Sustained.

09:35:43 13 MR. SHEASBY: Absolutely improper.

09:35:44 14 THE COURT: That's inflammatory language that's

09:35:48 15 not called for, Mr. Johnson.

09:35:50 16 MR. JOHNSON: I'll rephrase.

09:35:52 17 Q. (By Mr. Johnson) Did you get the impression that

09:35:54 18 Mr. Sheasby was questioning your qualifications to sit on

09:35:57 19 that stand, just based on reading that first sentence?

09:36:00 20 A. Yeah, I would say that's true.

09:36:03 21 Q. With the benefit of the whole definition, do you now

09:36:06 22 believe you meet that definition, Mr. -- Dr. Villasenor set

09:36:10 23 out?

09:36:11 24 A. I believe I do.

09:36:15 25 Q. Mr. Saffici, do you recall yesterday that you and I

09:36:20 1 discussed at length your experience in this industry?

09:36:23 2 A. Yes.

09:36:26 3 Q. Okay. And do you recall the part of the -- of the  
09:36:28 4 trial where I tendered you as an expert to the Court for  
09:36:31 5 approval?

09:36:32 6 A. Yes, I do.

09:36:34 7 Q. Do you recall, when asked for objections, what counsel  
09:36:37 8 for the Plaintiff said?

09:36:38 9 A. Yes, I do.

09:36:39 10 Q. What did he say?

09:36:41 11 A. He did not object.

09:36:43 12 Q. Do you have any idea why Mr. Sheasby would not have  
09:36:51 13 objected then and then try to do what he did with you with  
09:36:55 14 the definition?

09:36:56 15 MR. SHEASBY: Your Honor, objection, it's  
09:36:56 16 argumentative and it calls for -- calls for --

09:37:00 17 THE COURT: It calls for speculation about what  
09:37:01 18 was in Mr. Sheasby's mind. And Mr. Saffici, I'm sure, has  
09:37:05 19 no idea of what the answer to that is. That's an improper  
09:37:10 20 question, and I'll sustain.

09:37:12 21 MR. JOHNSON: I'll move on.

09:37:14 22 Q. (By Mr. Johnson) Now, Mr. Sheasby compared you with  
09:37:16 23 some of the other witnesses who have taken the stand; do  
09:37:20 24 you remember that?

09:37:20 25 A. Yes, I do.

09:37:20 1 Q. Do you recall he claimed Mr. Brady had given opinion  
09:37:24 2 testimony about whether the inventions at issue were  
09:37:26 3 described in the specifications?

09:37:28 4 A. Yes, I recall that.

09:37:29 5 Q. Can you tell the jury whether Mr. Brady is a -- an  
09:37:34 6 expert witness like you or a fact witness and corporate  
09:37:38 7 representative like Mr. Hecht?

09:37:38 8 A. He would be a fact --

09:37:40 9 MR. SHEASBY: Your Honor, objection. Can I  
09:37:43 10 approach?

09:37:44 11 THE COURT: Approach the bench, counsel.

09:37:45 12 (Bench conference.)

09:37:53 13 THE COURT: What's your objection?

09:37:54 14 MR. SHEASBY: Every single question that he's been  
09:37:56 15 asking for the last seven minutes has been a leading  
09:38:00 16 question. If I stand up every time and say leading, I'm  
09:38:03 17 going to get -- it's going to be very disruptive to the  
09:38:06 18 jury.

09:38:06 19 This is not a cross-examination. This is -- this  
09:38:08 20 is not a redirect examination. It's just him -- him  
09:38:10 21 leading the witness to say yes or no so he can make an  
09:38:13 22 argument. This is just -- this is completely improper.

09:38:17 23 MR. JOHNSON: Your Honor, I'm attempting to  
09:38:18 24 correct some severe misrepresentations by counsel about the  
09:38:21 25 content of factual testimony. And giving fact witnesses

09:38:25 1 the impromptu of an expert -- I would ask for leniency, but  
09:38:32 2 I will try to maintain.

09:38:33 3 THE COURT: I -- at this point, the only criticism  
09:38:39 4 I have of what Mr. Johnson is doing is the occasional use  
09:38:42 5 of inflammatory language like, beating you up. There's no  
09:38:46 6 place for that. I know what you're doing, I know why  
09:38:48 7 you're doing it, and I think you have a right to do it.  
09:38:51 8 There is a rule against leading questions. You'll just  
09:38:53 9 have to do the best you can.

09:38:54 10 MR. JOHNSON: Okay.

09:38:55 11 THE COURT: Let's proceed.

09:39:03 12 (Bench conference concluded.)

09:39:03 13 THE COURT: Let's proceed.

09:39:08 14 Q. (By Mr. Johnson) Mr. Saffici, do you know if Mr. Brady  
09:39:11 15 ever submitted an expert report in this case?

09:39:14 16 A. I really don't know one way or the other.

09:39:16 17 Q. Is Mr. Brady an inventor on these patents?

09:39:19 18 A. I don't recall. He indicated he was.

09:39:24 19 Q. In fact, have we seen any of the inventors -- you've  
09:39:29 20 been here the whole trial?

09:39:30 21 A. Yes.

09:39:30 22 Q. Have we seen any of the inventors take the stand like  
09:39:34 23 you are?

09:39:34 24 A. Not take the stand, no.

09:39:36 25 Q. And, sir, do you think in your work if Mr. Brady had

09:39:42 1 done an expert report, is that something you would have  
09:39:46 2 considered as a part of your work?  
09:39:47 3 A. Yes, I would.  
09:39:48 4 Q. Did you ever see --  
09:39:51 5 A. I'm sorry.  
09:39:52 6 Q. Did you ever see an expert report by Mr. Brady?  
09:39:55 7 A. No, I didn't.  
09:39:56 8 Q. And did you see Mr. Brady ever qualified as an expert  
09:40:06 9 the way you were?  
09:40:07 10 A. No, I don't believe the qualification was there when he  
09:40:11 11 was on the stand.  
09:40:12 12 Q. You have worked on this case how long, sir?  
09:40:17 13 A. About 11 months.  
09:40:24 14 Q. Okay. Now, in Paris, where I come from, I've heard the  
09:40:30 15 phrase, show your work. Have you heard that phrase?  
09:40:32 16 A. Yes, I believe I've heard that, yeah.  
09:40:34 17 Q. Did you do -- did you show your work in this case?  
09:40:37 18 A. I believe I did.  
09:40:38 19 Q. Did you draft -- did you do that by writing a report?  
09:40:40 20 A. Yes, that's correct.  
09:40:41 21 Q. And have we been talking about the report?  
09:40:45 22 A. Yes, we have.  
09:40:46 23 Q. Okay. Is this a copy of it?  
09:40:48 24 A. I believe that is.  
09:40:52 25 Q. How long is the expert report that you wrote in this

09:40:55 1 case?

09:40:55 2 A. I don't have that memorized, but --

09:41:00 3 Q. Estimate?

09:41:02 4 A. I don't know, several hundred pages, I believe.

09:41:04 5 Q. 453 sound about right?

09:41:06 6 A. Yeah, that's right, that's right.

09:41:08 7 Q. How many hours of deposition did you have to sit

09:41:13 8 through defending your expert report?

09:41:15 9 A. Oh, probably, between the two reports, about 12, I

09:41:22 10 guess; 12, 13.

09:41:24 11 Q. And, sir, who do you recall wrote the report for

09:41:32 12 Plaintiffs to respond to your report?

09:41:36 13 A. Mr. Calman.

09:41:37 14 Q. Okay. So Mr. Calman was the person on the Plaintiff's

09:41:41 15 side to respond to you, not Mr. Brady or Dr. Conte?

09:41:45 16 A. That's correct.

09:41:48 17 Q. Did you ever see an expert report from Dr. Conte, who

09:41:53 18 counsel represented gave testimony on written description?

09:41:56 19 Did he -- did you ever see a report by him on your issues?

09:42:02 20 A. No, I didn't.

09:42:03 21 Q. Now, Mr. Calman -- have we even seen Mr. Calman darken

09:42:09 22 the doors of this courthouse?

09:42:11 23 MR. SHEASBY: Your Honor, objection, this is

09:42:12 24 argumentative and improper language before the Court.

09:42:16 25 THE COURT: Overruled. You may answer the

09:42:18 1 question, Mr. Saffici.

09:42:19 2 A. No, I haven't seen Mr. Calman this week.

09:42:30 3 Q. (By Mr. Johnson) Mr. Saffici, I'd like to talk to you  
09:42:48 4 really briefly about some of the other issues counsel has  
09:42:51 5 tried to talk with you about in the context of what we've  
09:42:54 6 been discussing.

09:42:58 7 MR. JOHNSON: If we could pull up the '681 spec,  
09:43:03 8 Paragraphs 4, 11 through 34, that you were discussing.

09:43:25 9 I'm sorry, Mr. Bakale, I think I've got the  
09:43:29 10 wrong -- written down the wrong cite. Actually, Lines 37  
09:43:39 11 through 49.

09:43:45 12 Q. (By Mr. Johnson) Is this what you were discussing with  
09:43:46 13 counsel earlier?

09:43:47 14 A. Yes, that's the section.

09:43:48 15 Q. And do you recall where you said that you gave a  
09:43:53 16 different answer in your -- in your deposition about  
09:44:01 17 whether or not these had to be -- whether there's a  
09:44:05 18 limitation on -- whether these could be in the same box, I  
09:44:09 19 believe is the phrase?

09:44:10 20 A. Yes.

09:44:12 21 Q. Okay. Now, Mr. Saffici, do you analyze the con --  
09:44:17 22 the -- the specification just in a -- in a single  
09:44:21 23 paragraph, or do you look at it in the whole context?

09:44:24 24 A. I look at it in the whole context.

09:44:27 25 Q. Okay. And can you explain why your answer was

09:44:29 1 different about whether they could be in the same box, the  
09:44:34 2 image capture device and general purpose computer, at your  
09:44:36 3 deposition in context of the whole specification?  
09:44:40 4 A. Well, because other areas in the specification also  
09:44:44 5 talk about the devices and show them as being separate.  
09:44:49 6 Q. Including, for instance, this line, sir?  
09:44:54 7 A. Yes, that's one of them.  
09:44:56 8 Q. And the fact that it's telling you --  
09:45:01 9 A. Scanner or digital camera, yes.  
09:45:03 10 Q. In fact, does the specification ever show you an  
09:45:10 11 example system of putting the general purpose computer and  
09:45:13 12 the image capture device in the same box and using that for  
09:45:17 13 check deposit or check imaging?  
09:45:20 14 A. I did not find that in the specification.  
09:45:26 15 Q. You were asked some questions about PDAs. Do you  
09:45:28 16 recall that?  
09:45:29 17 A. Yes.  
09:45:30 18 Q. Now, we went over this in some detail yesterday, but in  
09:45:35 19 arriving at written description opinions, do you go out and  
09:45:41 20 analyze what the market was, or do you look at something  
09:45:45 21 else?  
09:45:45 22 A. I looked at the specification.  
09:45:47 23 Q. Regardless of what the market was having, what is the  
09:45:51 24 invention limited to?  
09:45:52 25 A. The invention was limited to a general purpose computer

09:45:57 1 with a separate capture device.

09:46:03 2 MR. JOHNSON: Let's look at the '605 patent,

09:46:05 3 Paragraph -- or Column 8, Lines 3 through 17.

09:46:09 4 Q. (By Mr. Johnson) Does -- did the inventors describe in

09:46:23 5 the specification PDAs in a way to one of skill in the art

09:46:26 6 who would indicate they are used in check processing?

09:46:29 7 A. No, there's no description to that effect.

09:46:31 8 Q. Remind the jury in the context of this patent what's

09:46:35 9 being described.

09:46:37 10 A. Again, this portion of the specification is referring

09:46:40 11 to Figure 4, the exemplary network or distributed computing

09:46:46 12 environment. And it talked about these numbers -- 400s

09:46:50 13 here as being types -- just describing devices that can be

09:46:54 14 on that network.

09:46:55 15 And then further down here, it talked about same

09:46:59 16 or different devices, such as -- and that's where it

09:47:02 17 enumerated the PDA, the audio/video -- audio/video devices,

09:47:09 18 MP3 player, personal computer, et cetera.

09:47:12 19 Q. Does the patent disclose how an MP3 player can be used

09:47:21 20 in check processing?

09:47:22 21 A. No, it doesn't.

09:47:23 22 Q. Treat it the same as a PDA?

09:47:25 23 A. I took it, because they're all similar here, that they

09:47:28 24 were treated in the same way.

09:47:33 25 Q. Can we look at -- anything about your discussion with

09:47:36 1 counsel that changes your opinion about whether the  
09:47:39 2 discussion of PDAs in the patents supports written  
09:47:41 3 description of the full scope of the claims?  
09:47:43 4 A. Nothing changes them.  
09:47:45 5 Q. Okay. I want to look at your discussion at Figure 3,  
09:47:47 6 and I think that's Column 6, Lines 39 through 55.  
09:48:01 7 Is this a section of the specification you were  
09:48:07 8 discussing regarding the internal workings of the camera?  
09:48:11 9 Do you recall that?  
09:48:11 10 A. Yes.  
09:48:12 11 Q. And that's seen -- the jury can see that in Figure 3?  
09:48:16 12 A. Right.  
09:48:17 13 Q. Now, is there a discussion here regarding the coupling  
09:48:22 14 between the camera or image capture and the general purpose  
09:48:29 15 computer, or is this solely about the camera?  
09:48:32 16 A. Well, it's talking about the image capture device.  
09:48:37 17 Q. Okay. Now, is the only discussion -- will you look  
09:48:46 18 here at the last line? And what it says about the  
09:48:52 19 communication connections that were discussed up here in  
09:48:56 20 the processors that you discussed with counsel, what does  
09:48:59 21 it say about those?  
09:49:00 22 A. Right. It says that the communications -- the  
09:49:04 23 connection, which refers to it as 308, can serve to  
09:49:09 24 communicatively couple the device to a general purpose  
09:49:12 25 computer as described in Figure 2.

09:49:18 1 MR. JOHNSON: Can we see Figure 3, Mr. Bakale?

09:49:23 2 Q. (By Mr. Johnson) Does Figure 3 have anything to do

09:49:35 3 with a discussion of the general purpose computer being

09:49:39 4 linked to the camera in the way that the claims require?

09:49:42 5 A. No, this figure is just showing that image capture

09:49:46 6 device itself, not a general purpose computer.

09:49:55 7 Q. Mr. Saffici, I would now like to -- do you remember

09:50:05 8 when -- now, I'd like to turn to -- to discussions with

09:50:08 9 counsel about what you could learn -- remember the

09:50:12 10 discussions about what you could learn from the '227 -- the

09:50:16 11 '200 specification and the '681 specification, that they

09:50:19 12 were the same thing?

09:50:20 13 A. Yes.

09:50:21 14 Q. And in that discussion, counsel referred you to some

09:50:28 15 deposition testimony at Page 9. Let me get that for us.

09:50:36 16 MR. JOHNSON: Your Honor, I apologize. We have a

09:50:39 17 little water spill from Mr. Sheasby's water.

09:50:56 18 Q. (By Mr. Johnson) And I believe he referred you to

09:50:58 19 Page 9 --

09:50:59 20 MR. JOHNSON: Thank you so much.

09:51:10 21 Q. (By Mr. Johnson) -- Page 9, Line 22, through 10:10.

09:51:22 22 MR. JOHNSON: May I have the camera or can you --

09:51:24 23 okay. Thank you.

09:51:25 24 Q. (By Mr. Johnson) Now, down here, sir, is what he

09:51:27 25 referred you to and asked you questions about in terms

09:51:30 1 of -- that all the elements of those claims are described  
09:51:34 2 in the Oakes '200 patent, referring to the '681. Do you  
09:51:37 3 recall that?

09:51:38 4 A. Yes.

09:51:38 5 Q. And you agreed that they are, right, sir?

09:51:42 6 A. I did.

09:51:42 7 Q. Okay. Now, you have two opinions in this case?

09:51:49 8 A. Yes, I do.

09:51:50 9 Q. What are those areas?

09:51:51 10 A. Written description and anticipation.

09:51:54 11 Q. Did we cover in your direct that those have very  
09:51:58 12 different legal standards, very different things that you  
09:52:01 13 look at?

09:52:02 14 A. Yes, that's correct.

09:52:03 15 Q. Okay. In context of this quote, sir, what were you  
09:52:07 16 discussing with Mr. Sheasby at the deposition when you gave  
09:52:11 17 this testimony?

09:52:12 18 A. Anticipation.

09:52:13 19 Q. Okay. And can we see that, if we just looked a few  
09:52:16 20 lines up from where he was directing you?

09:52:18 21 A. Yes, we can.

09:52:19 22 Q. How do we do that, sir?

09:52:21 23 A. Well, Mr. Sheasby had pointed me to Paragraph 246 in my  
09:52:26 24 report.

09:52:28 25 Q. Okay. And if you look in your report, sir, what

09:52:32 1 section -- you don't have to look at it unless you need to.

09:52:35 2 A. Oh.

09:52:35 3 Q. What section of your report, in terms of opinions, is

09:52:38 4 Section 246 in?

09:52:39 5 A. Part of Section B, which was showing the anticipation  
09:52:43 6 of the Oakes '200 to the '681.

09:52:47 7 Q. Anything about this testimony or that part of the  
09:52:51 8 report that has anything to do with written description  
09:52:53 9 opinions?

09:52:54 10 A. No, it does not.

09:52:56 11 Q. Were you asked the same questions about the '605 patent  
09:53:09 12 specification?

09:53:10 13 A. Yes.

09:53:11 14 Q. And did you say that all elements -- in your  
09:53:14 15 deposition, all elements of the '605 patent are described  
09:53:18 16 in the Oakes '200 -- or, sorry, '227?

09:53:25 17 A. Yes, I did.

09:53:25 18 Q. And when counsel was having that colloquy with you and  
09:53:30 19 talking about it, what area of the opinion did that  
09:53:34 20 testimony have to deal with?

09:53:35 21 A. We were still within Section B -- sorry, it wasn't B at  
09:53:39 22 that point. It was still anticipation.

09:53:41 23 Q. Anything about that deposition testimony that bears on  
09:53:45 24 written description?

09:53:46 25 A. No, it doesn't.

09:53:47 1 Q. In fact, sir, what is the difference between  
09:53:52 2 anticipation and written description in terms of whether  
09:53:54 3 you have to find everything in a patent or an example?  
09:53:56 4 A. With written description, as we spoke yesterday, the  
09:54:04 5 specification must describe all the ways that the claims  
09:54:10 6 say that the invention works.

09:54:13 7                   With anticipation, a prior art only needs to  
09:54:16 8 identify one of the ways in which the claims of a patent  
09:54:22 9 work.

09:54:26 10 Q. Mr. Saffici, when you gave -- were talking about the  
09:54:34 11 descriptions of elements in your testimony -- in your  
09:54:39 12 deposition with counsel, what were you referring to in  
09:54:42 13 terms of anticipation?

09:54:42 14 A. That only one of the ways -- ask your question again,  
09:54:50 15 Mr. Johnson, before I --

09:54:51 16 Q. When you were -- when you were having these discussions  
09:54:54 17 with counsel that ends up were about anticipation and not  
09:54:57 18 written description, what were you referring to?

09:54:59 19 A. Oh. Well, I was referring to the -- to the rule around  
09:55:02 20 anticipation that the specification would identify one of  
09:55:07 21 the ways in which the claims work.

09:55:10 22 Q. Do you recall discussions with counsel about  
09:55:16 23 Paragraph 209 of your report?

09:55:18 24 A. 209?

09:55:20 25 Q. Can you go there?

09:55:20 1 A. Yes, let me go there. Oh, yes.

09:55:26 2 MR. JOHNSON: Mr. Bakale, can we have on the  
09:55:27 3 screen the Oakes '227, which I believe is -- yes, the  
09:55:40 4 patent. Defense Exhibit 5. Can we go to Paragraph 4, 30  
09:55:52 5 through 34? Sorry, Column 4, Line 30 to 34.

09:56:12 6 Q. (By Mr. Johnson) In your report when you're talking  
09:56:19 7 about a customer can use a general purpose computer that  
09:56:22 8 couples to image capture devices, is this part of the  
09:56:26 9 specification that would inform that opinion?

09:56:29 10 A. Yes, in the '227.

09:56:34 11 Q. What are the examples of image capture devices that can  
09:56:39 12 easily be coupled to or be -- what are the examples of the  
09:56:55 13 image capture devices used in the -- in the context of the  
09:56:58 14 specification?

09:56:58 15 A. It talks about a scanner and digital camera.

09:57:03 16 Q. And does that inform your reading of Columns 3, 59  
09:57:09 17 through 64, that you were discussing in Paragraph 10 -- 209  
09:57:14 18 of your pat -- of your report?

09:57:15 19 A. Yes, it does.

09:57:16 20 Q. Do you stand by your opinion that the patent does not  
09:57:35 21 teach general purpose computer with a cam -- with a camera  
09:57:41 22 in a single unit?

09:57:43 23 A. I -- I do stand by my opinion.

09:57:50 24 MR. JOHNSON: May I have a moment, Your Honor?

09:57:52 25 THE COURT: You may.

09:58:01 1 Q. (By Mr. Johnson) Now, at the end of the day, sir,  
09:58:04 2 yesterday, Mr. Sheasby and you were discussing your  
09:58:07 3 deposition testimony about mobile devices and the  
09:58:09 4 specification. Do you recall that?

09:58:10 5 A. Yes.

09:58:15 6 MR. JOHNSON: And may I have the camera?

09:58:17 7 Q. (By Mr. Johnson) Mr. Sheasby asked you to look at  
09:58:23 8 Line -- at Page 51 of your deposition, and you did that,  
09:58:26 9 right, sir?

09:58:27 10 A. Yes.

09:58:28 11 Q. And what question did he ask you at Line 23?

09:58:33 12 A. So your testimony under oath at that time was that the  
09:58:39 13 specification of the patents-in-suit describe mobile  
09:58:42 14 devices, correct?

09:58:47 15 Q. And was that your testimony at Paragraph -- at Page 51,  
09:58:51 16 Lines 5 through 10?

09:58:52 17 A. I believe, yes, it was.

09:59:06 18 MR. JOHNSON: Sorry, Your Honor.

09:59:16 19 Q. (By Mr. Johnson) Let's look at that.

09:59:20 20 Question at line 5: Do you stand by the fact that  
09:59:43 21 the specifications of the patent --

09:59:43 22 THE COURT: Slow down, Mr. Johnson.

09:59:46 23 MR. JOHNSON: Sorry, Your Honor. It's contagious.

09:59:48 24 THE COURT: Well, you caught it.

09:59:50 25 Q. (By Mr. Johnson) Do you stand by the fact that the

09:59:55 1 specifications of the patent describe as being -- as mobile  
09:59:59 2 devices being within the scope of the purported invention?  
10:00:03 3 What did you answer?  
10:00:05 4 A. Read it out loud?  
10:00:07 5 Q. Yes.  
10:00:08 6 A. I did when I wrote this, so my opinion stays the same.  
10:00:12 7 Q. Is there any mention of camera in that section of your  
10:00:16 8 testimony?  
10:00:17 9 A. No, there isn't.  
10:00:21 10 Q. Yesterday, in the following questions after that  
10:00:24 11 initial question that we looked at, Mr. Sheasby had  
10:00:30 12 follow-up and confirmed: Do you stand by the fact that the  
10:00:34 13 specifications of the patent describe as being -- as mobile  
10:00:38 14 devices being within the scope of the purported invention?  
10:00:41 15 What did you respond to it?  
10:00:42 16 A. I don't believe I have reason to change that opinion.  
10:00:45 17 Q. Right. Anything in that about cameras?  
10:00:49 18 A. No.  
10:00:49 19 Q. And was there anything in your testimony that you all  
10:00:53 20 were referring to about cameras?  
10:00:54 21 A. No, there wasn't.  
10:00:55 22 Q. Sorry, this is the testimony -- the trial testimony.  
10:01:13 23 Did you continue to refer to the deposition  
10:01:15 24 testimony we've been referring to, in your questioning at  
10:01:17 25 the end of the day?

10:01:18 1 A. Yes, it was continued.

10:01:20 2 Q. Now, in the last question, what does Mr. Sheasby ask

10:01:25 3 you?

10:01:27 4 A. Sir, the specifications of the patents in this case

10:01:31 5 disclose the use of mobile devices with digital cameras,

10:01:36 6 correct? That's what you testified to previously.

10:01:39 7 Q. Now, was that phrase "with digital cameras" in any of

10:01:45 8 the deposition testimony that you all had been referring?

10:01:48 9 A. No, it was not.

10:01:48 10 Q. Who put that in there?

10:01:50 11 A. Mr. Sheasby.

10:01:53 12 Q. And is that your testimony at deposition or at trial?

10:01:58 13 A. No, it wasn't.

10:01:59 14 Q. Did you feel a little misled, sir?

10:02:01 15 A. Yes, I did.

10:02:03 16 MR. JOHNSON: May I have a moment, Your Honor?

10:02:05 17 THE COURT: You may.

10:02:21 18 MR. JOHNSON: Mr. Bakale, can I have Slide 69,

10:02:26 19 please?

10:02:26 20 Q. (By Mr. Johnson) Mr. Saffici, what have you concluded

10:02:35 21 about the '605 patent after your 453 page report, hours of

10:02:40 22 deposition, and your testimony here today?

10:02:41 23 A. My conclusion remains that the '605 patent first lacks

10:02:47 24 written description, and, second, is anticipated by the

10:02:50 25 Oakes '227 patent.

10:02:54 1 Q. Because of the written description, what priority date  
10:02:56 2 applies to the '605 patent?

10:02:58 3 A. The '605 patent then would get the priority date of  
10:03:02 4 July 28th, 2017.

10:03:06 5 Q. Does the full -- does the written description disclosed  
10:03:09 6 to you, as one of skill in the art, that the full scope of  
10:03:12 7 the invention was disclosed in the written description?

10:03:14 8 A. It was not disclose -- fully disclosed.

10:03:17 9 Q. As to the '681 patent, sir, what are your opinions?

10:03:21 10 A. My opinions are still that the '681 patent lacks  
10:03:25 11 written description and, secondarily, is anticipated by the  
10:03:29 12 Oakes '200 patent.

10:03:31 13 Q. And what priority date would apply to the '681 patent?

10:03:34 14 A. The priority date then would change to July 28th, 2017.

10:03:37 15 Q. And does the written description indicate to you as one  
10:03:40 16 of skill in the art that the inventors possessed and  
10:03:44 17 disclosed the full scope of the claims in this case for the  
10:03:47 18 '681 patent?

10:03:47 19 A. They do not provide full scope disclosure.

10:03:50 20 Q. And do your opinions apply both to the independent and  
10:03:53 21 dependent claims at issue in this case?

10:03:54 22 A. Yes, they do.

10:04:00 23 MR. JOHNSON: Moment, Your Honor?

10:04:01 24 THE COURT: One more time, Mr. Johnson.

10:04:03 25 MR. JOHNSON: Thank you.

10:04:05 1 Pass the witness, Your Honor.

10:04:08 2 THE COURT: Counsel, approach the bench, please.

10:04:12 3 (Bench conference.)

10:04:15 4 THE COURT: Any estimate on your additional cross

10:04:20 5 time?

10:04:20 6 MR. SHEASBY: Seven minutes.

10:04:21 7 THE COURT: Okay. Let's go.

10:04:23 8 (Bench conference concluded.)

10:04:34 9 THE COURT: All right. We'll proceed with

10:04:37 10 additional cross-examination by the Plaintiff.

10:04:39 11 When you're ready, Mr. Sheasby.

10:04:39 12 RECROSS-EXAMINATION

10:04:41 13 BY MR. SHEASBY:

10:04:41 14 Q. Mr. Saffici, you have extraordinary experience in

10:04:45 15 remote deposit capture, correct?

10:04:46 16 A. I believe so.

10:04:48 17 Q. But, Mr. Saffici, you were not hired as a technical

10:04:53 18 expert in this case, correct?

10:04:54 19 A. That's absolutely correct.

10:04:56 20 Q. Mr. Saffici, you have extraordinary experience in

10:05:00 21 remote deposit capture, but you have no technical

10:05:03 22 experience actually designing mobile remote deposit capture

10:05:06 23 systems, correct?

10:05:08 24 A. Designing from a technical point, I would agree.

10:05:11 25 Q. Mr. Saffici, you are an extraordinarily experienced

10:05:18 1 individual, and you have the ability to analyze the value  
10:05:20 2 of an MRDC system, correct?

10:05:22 3 A. Yes, I could evaluate it.

10:05:26 4 Q. But the one thing that you didn't do in this trial is  
10:05:31 5 evaluate the value of USAA's patents, correct?

10:05:33 6 A. Because I wasn't asked to.

10:05:39 7 Q. And, Mr. Saffici, there's a presumption of validity  
10:05:43 8 that is associated with the patents in this case, correct?

10:05:46 9 A. Say it again, please.

10:05:48 10 Q. There's a presumption of validity that is associated  
10:05:51 11 with the patents in this case, correct?

10:05:52 12 A. The fact that the patent was granted, yes.

10:05:55 13 Q. And the jury must find by clear and convincing evidence  
10:05:58 14 that the patent was -- is invalid, correct?

10:06:02 15 A. That is correct.

10:06:02 16 Q. And that's a dramatically different standard from the  
10:06:05 17 standard for infringement, correct, sir?

10:06:10 18 MR. JOHNSON: Your Honor, I would object to the  
10:06:13 19 use of the phrase "dramatically." The Court will obviously  
10:06:17 20 instruct that it's a different standard.

10:06:19 21 THE COURT: Rephrase the question, Mr. Sheasby.

10:06:21 22 Q. (By Mr. Sheasby) The standard for clear and convincing  
10:06:23 23 evidence is significantly higher than the standard of  
10:06:28 24 preponderance of the evidence, correct, sir?

10:06:30 25 A. Since I didn't work on any of the infringement side of

10:06:33 1 it, I'm not in the position to really respond.

10:06:36 2 Q. Mr. Saffici, thank you for your time these last two

10:06:40 3 days.

10:06:41 4 MR. SHEASBY: I pass the witness, Your Honor.

10:06:43 5 THE WITNESS: Thank you.

10:06:43 6 THE COURT: Redirect?

10:06:45 7 MR. JOHNSON: No, Your Honor.

10:06:45 8 THE COURT: You may step down, Mr. Saffici.

10:06:48 9 THE WITNESS: Thank you, Your Honor.

10:06:49 10 THE COURT: You're welcome.

10:06:50 11 Ladies and gentlemen, we're going to take a short

10:06:53 12 recess at this time. You may close and leave your

10:06:56 13 notebooks in your chairs. Follow all the instructions I've

10:06:58 14 given you, including not to discuss the case among

10:07:00 15 yourselves. And we'll be back shortly to continue with the

10:07:03 16 next witness for the Defendants.

10:07:05 17 The jury is excused for recess at this time.

10:07:08 18 COURT SECURITY OFFICER: All rise.

10:07:09 19 (Jury out.)

10:07:32 20 THE COURT: The Court stands in recess.

10:28:44 21 (Recess.)

10:28:45 22 (Jury out.)

10:28:46 23 COURT SECURITY OFFICER: All rise.

10:28:49 24 THE COURT: Be seated, please.

10:28:50 25 I understand Defendants have a witness or

10:29:12 1 witnesses by deposition at this juncture; is that correct?

10:29:15 2 MR. MELSHEIMER: It is correct, Your Honor.

10:29:17 3 THE COURT: All right. How many witnesses by  
10:29:18 4 deposition do you have?

10:29:19 5 MR. MELSHEIMER: I believe we have three witnesses  
10:29:21 6 by deposition at this time, Your Honor, and then a live  
10:29:23 7 witness.

10:29:25 8 THE COURT: And the approximate time on those  
10:29:27 9 three deposition witnesses?

10:29:28 10 MR. MELSHEIMER: I believe it's about 20 minutes  
10:29:31 11 or so.

10:29:31 12 THE COURT: All right. All right. I'll bring in  
10:29:34 13 the jury, and we'll proceed with your first deposition  
10:29:36 14 witness.

10:29:36 15 MR. MELSHEIMER: Thank you, Your Honor.

10:29:37 16 THE COURT: Let's bring in the jury, please.

10:29:45 17 COURT SECURITY OFFICER: All rise.

10:29:47 18 (Jury in.)

10:30:04 19 THE COURT: Please be seated.

10:30:05 20 Defendant, call your next witness.

10:30:13 21 MS. WILLIAMS: Thank you, Your Honor.

10:30:18 22 Defendant calls Mr. Greg Harpel by deposition, a  
10:30:25 23 USAA employee and inventor.

10:30:27 24 THE COURT: All right. Proceed with the witness  
10:30:29 25 by deposition.

10:30:30 1 (Videoclip played.)

10:30:31 2 QUESTION: Can you please state your name for the

10:30:33 3 record?

10:30:33 4 ANSWER: Greg Harpel.

10:30:35 5 QUESTION: When did you retire?

10:30:37 6 ANSWER: October of 2015.

10:30:41 7 QUESTION: Who did -- what company did you retire

10:30:47 8 from?

10:30:47 9 ANSWER: USAA, or United Services Automobile

10:30:48 10 Association.

10:30:48 11 QUESTION: What was your first involvement with

10:30:55 12 USAA's banking business?

10:31:03 13 ANSWER: I worked -- the group that I was working

10:31:09 14 for or working with had responsibility for managing

10:31:13 15 research projects. The -- I was assigned a research

10:31:19 16 project that was in the banking division.

10:31:27 17 QUESTION: What time frame was this?

10:31:28 18 ANSWER: That would have been about 2005.

10:31:32 19 QUESTION: Did the product that this project

10:31:36 20 eventually became, did that have a commercial name that it

10:31:39 21 was sold or distributed under?

10:31:41 22 ANSWER: The initial name was called Deposit@Home.

10:31:45 23 QUESTION: Okay. So this process flow was sort of

10:31:48 24 an overview of how the entire system would work and how you

10:31:52 25 could link it into USAA's existing banking system?

10:31:57 1 ANSWER: Correct.

10:31:57 2 QUESTION: So parts of the diagram were  
10:31:59 3 conventional banking processes that USAA already had for  
10:32:03 4 other purposes, and parts were things that you needed to  
10:32:06 5 modify for this project?

10:32:08 6 ANSWER: Correct.

10:32:08 7 QUESTION: What parts did you need to modify?

10:32:11 8 ANSWER: I don't really know. I mean, that would  
10:32:15 9 be -- the parts that would be early on, the image capture  
10:32:21 10 part would be the primary. After that, I don't really know  
10:32:25 11 how it all flowed through. That's not my area of expertise  
10:32:34 12 at all.

10:32:35 13 QUESTION: So other than the image capture piece,  
10:32:37 14 is there anything you can recall today that needed to be  
10:32:42 15 changed in order to make this research project work?

10:32:46 16 ANSWER: To -- to the best of my knowledge, it  
10:32:49 17 could plug into our -- our existing systems. Now I do  
10:32:55 18 recall, though, that we had bank people that had to  
10:32:58 19 evaluate what was being done and to see if it -- if it  
10:33:06 20 had -- if changes were required. But I don't specifically  
10:33:09 21 recall any -- any that had changes required.

10:33:15 22 QUESTION: All right. How long did you work on  
10:33:17 23 this project relating to remote deposit capture?

10:33:25 24 ANSWER: I'd say probably a total of two and a  
10:33:28 25 half months.

10:33:28 1                   QUESTION: After you left the project in either  
10:33:32 2 2005 or 2006, did you have any further involvement with  
10:33:36 3 USAA's remote deposit capture efforts?  
10:33:38 4                   ANSWER: No.  
10:33:44 5                   QUESTION: Do your patents describe any computing  
10:33:50 6 device with a camera integrated into the same device as the  
10:33:55 7 computer processor?  
10:33:57 8                   ANSWER: Do my patents? You mean -- you mean '605  
10:34:01 9 in particular?  
10:34:03 10                  QUESTION: Yes, either of the two patents that you  
10:34:04 11 have in front of you, the '605 or the '227 patent. Do  
10:34:09 12 either of those patents describe any computing device with  
10:34:15 13 a camera integrated into the same device as the computer  
10:34:18 14 processor?  
10:34:18 15                  ANSWER: A computing device, not that I'm aware  
10:34:22 16 of.  
10:34:22 17                  QUESTION: So I believe the way you just phrased  
10:34:25 18 it was, is there a difference between the portable device  
10:34:29 19 comprising a general purpose computer and the digital  
10:34:32 20 camera?  
10:34:32 21                  ANSWER: Yes, there is a difference.  
10:34:33 22                  QUESTION: What's the difference?  
10:34:34 23                  ANSWER: The digital camera is physically separate  
10:34:44 24 from the portable device, and the digital camera is the  
10:34:47 25 image capture. But there -- there must be some

10:34:51 1 communication pathway, whether it be a wire or through some  
10:34:59 2 technology, like Bluetooth or something, to communicate  
10:35:04 3 from the digital camera to the portable device.

10:35:06 4                   QUESTION: All right. Can you take a look at  
10:35:10 5 Claim 12, which starts in Column 16, Line 30 and read  
10:35:16 6 through Line 34, please?

10:35:20 7                   ANSWER: Okay. So that -- that's implying to me  
10:35:24 8 that the phrase -- the term "system," which is what's  
10:35:27 9 referred to in Claim 12, system includes both the digital  
10:35:33 10 camera and the portable device.

10:35:36 11                   QUESTION: Okay. And to be clear, in Claim 12 the  
10:35:41 12 language that's actually used in the claims is handheld  
10:35:44 13 mobile device, correct?

10:35:45 14                   ANSWER: System for allowing the customer to  
10:35:47 15 deposit a check... using a customer's own handheld mobile  
10:35:52 16 device with a digital camera.

10:35:55 17                   QUESTION: Okay. And now I want to ask the same  
10:35:59 18 question I asked about Claim 1.

10:36:01 19                   Is there a difference between the handheld mobile  
10:36:03 20 device and the digital camera in Claim 12?

10:36:05 21                   ANSWER: Difference between the handheld mobile  
10:36:12 22 device and the camera. Okay. In -- in Claim 12, where it  
10:36:21 23 says, using a customer's own handheld mobile device with a  
10:36:25 24 digital camera, that sounds to me like the -- whatever a  
10:36:30 25 handheld mobile device would be, could either be a camera

10:36:37 1 itself or could be some device within -- with a camera  
10:36:42 2 inside it. That's what I get out of Claim 12.

10:36:48 3                   QUESTION: Is there any example described in the  
10:36:53 4 specification of the '605 patent of a handheld mobile  
10:36:57 5 device with a digital camera integrated into the mobile  
10:37:02 6 device?

10:37:02 7                   ANSWER: Well, right in that -- in that paragraph  
10:37:04 8 you're referring to, it says, using a customer's own  
10:37:09 9 handheld mobile device with a digital camera.

10:37:14 10                  So that, to me, says -- that implies that the  
10:37:17 11 handheld mobile device may have a camera with it, installed  
10:37:21 12 in it, or as a part of it. Integrated into it would be  
10:37:27 13 right.

10:37:27 14                  QUESTION: Okay. I'm trying to ask not about the  
10:37:30 15 claim language. So when I'm asking about the  
10:37:32 16 specification, I mean the text -- the two columns of text  
10:37:35 17 starting at Column 1 and continuing through Column 15,  
10:37:38 18 Line 6.

10:37:39 19                  So with that understanding of the specification,  
10:37:44 20 is there any part of that specification, those  
10:37:49 21 approximately 15 columns of text, that describe a handheld  
10:37:58 22 mobile device with an integrated digital camera?

10:37:58 23                  ANSWER: Not that I know of, but I -- I don't  
10:38:03 24 know. I don't know one way or the other because I don't --  
10:38:07 25 I don't know what's in this 15 pages of text.

10:38:13 1 You're talking about something that's 10 years ago  
10:38:16 2 or 12 years ago, whatever. Sorry, I didn't memorize 12 --  
10:38:22 3 12 pages of text.

10:38:24 4 QUESTION: Are you familiar with USAA's check  
10:38:32 5 deposit processes that existed before Deposit@Home was  
10:38:40 6 released?

10:38:40 7 ANSWER: Only in very vague terms. Very high  
10:38:44 8 level. Definitely don't know the details of their check  
10:38:46 9 processing, no.

10:38:47 10 QUESTION: And with that understanding, was  
10:38:51 11 validating a routing number a part of USAA's existing  
10:38:54 12 systems before it released Deposit@Home?

10:38:56 13 ANSWER: I would think it would be a part of their  
10:39:01 14 system, yes. You'd have to identify that the check was  
10:39:04 15 being presented to the correct bank.

10:39:06 16 QUESTION: That would also be a standard process  
10:39:09 17 in the banking industry generally, correct?

10:39:11 18 ANSWER: Correct.

10:39:12 19 (Videoclip ends.)

10:39:13 20 THE COURT: Does that conclude this witness by  
10:39:17 21 deposition?

10:39:19 22 MS. WILLIAMS: Yes, Your Honor, it does.

10:39:21 23 THE COURT: Please proceed with your next witness.

10:39:23 24 MS. WILLIAMS: Thank you, Your Honor.

10:39:23 25 Defendants call Troy -- Mr. Troy Huth by

10:39:29 1 deposition, another USAA inventor.

10:39:31 2 THE COURT: Please proceed.

10:39:34 3 (Videoclip played.)

10:39:35 4 QUESTION: Good morning. Could you please state  
10:39:40 5 your name for the jury?

10:39:41 6 ANSWER: Yes, it's Troy Bartlette Huth.

10:39:44 7 QUESTION: And in 1998, when you left Bank of  
10:39:47 8 America, what did you do next?

10:39:49 9 ANSWER: I -- that's when I joined USAA.

10:39:51 10 QUESTION: So you said the next project was  
10:39:53 11 Deposit@Home?

10:39:53 12 ANSWER: Correct.

10:39:53 13 QUESTION: So you said, we would test. Did you  
10:39:56 14 personally partake in any of these testing efforts?

10:39:59 15 ANSWER: I did.

10:40:02 16 QUESTION: Okay. And do you recall what -- what  
10:40:04 17 types of devices you tested?

10:40:06 18 ANSWER: Me personally, probably just a number of  
10:40:10 19 different brands and types of -- of either flatbed or  
10:40:16 20 sheetfed scanners.

10:40:17 21 QUESTION: And in your role as project manager,  
10:40:22 22 did you ever experiment with any image capture devices that  
10:40:26 23 were not scanners?

10:40:27 24 ANSWER: I personally did not.

10:40:29 25 QUESTION: I'm going to hand you what I've marked

10:40:31 1 as Exhibit 1.

10:40:36 2 This is an email chain, looks like from 2006.

10:40:48 3 Have you seen this before?

10:40:49 4 ANSWER: Yes, I have.

10:40:49 5 QUESTION: And so you would have been able to see  
10:40:55 6 this email from Mr. Oakes at that time that you were  
10:41:00 7 included on the chain?

10:41:01 8 ANSWER: That is correct.

10:41:03 9 QUESTION: And he says: We processed the first  
10:41:07 10 check image captured by the use of a camera. Do you see  
10:41:12 11 that?

10:41:13 12 ANSWER: Yes.

10:41:13 13 QUESTION: Do you know of anyone at USAA  
10:41:15 14 experimenting with the use of a camera with the  
10:41:18 15 Deposit@Home service prior to October 25th, 2006?

10:41:34 16 ANSWER: I'm not aware specifically. I know we  
10:41:36 17 had had discussion about different types of image capture  
10:41:43 18 devices. I was not involved in any of the testing with any  
10:41:46 19 of those other devices. And I don't know what all was  
10:41:50 20 being done down in the innovation lab, as I was just  
10:41:54 21 focused on and only a part of the Deposit@Home piece.

10:41:59 22 QUESTION: When you say we had discussions, who is  
10:42:07 23 "we"?

10:42:10 24 ANSWER: Probably just sitting in a conference  
10:42:11 25 room with some of the -- the technical team and -- and some

10:42:14 1 of the innovation team, just talking about what else could  
10:42:19 2 be used and throwing ideas around. What other types of,  
10:42:26 3 you know, scanners have we not thought of? What other  
10:42:29 4 types of image capture devices?

10:42:34 5 I don't know if it was prior to this email. I  
10:42:36 6 remember the talk about could they use web cams and just  
10:42:39 7 hold the check up to a webcam and snap the image that way.  
10:42:45 8 I don't remember the timing of that, but I remember, you  
10:42:47 9 know, webcams coming up in the conversation.

10:42:48 10 QUESTION: When you say webcam, can you describe  
10:42:51 11 what you mean by webcam?

10:42:53 12 ANSWER: I would say back in the day, you know,  
10:42:58 13 webcams would sit on the top of a monitor, and, you know,  
10:43:02 14 could -- they hold up to that webcam that was plugged in,  
10:43:06 15 you know, with a USB cable to a computer.

10:43:12 16 QUESTION: And those would be devices that were  
10:43:14 17 separate from the computer?

10:43:16 18 ANSWER: I mean, it's plugged into it, but it  
10:43:19 19 wasn't a part of the computer.

10:43:32 20 QUESTION: You could take it off the computer?

10:43:32 21 ANSWER: Unplug it.

10:43:32 22 QUESTION: And then going on further in this  
10:43:38 23 email, it says: A member used his camera with a TWAIN  
10:43:42 24 driver to capture the image and process it through the  
10:43:45 25 Deposit@Home application. The image was processed

10:43:48 1 correctly.

10:43:49 2 Do you know what a TWAIN driver is?

10:43:51 3 ANSWER: That's the driver that gets the image  
10:43:58 4 from the device to the computer. I wouldn't be able to  
10:44:02 5 speak to it from a technical perspective, though.

10:44:05 6 QUESTION: So it gets the image from the separate  
10:44:09 7 image capture device over to the computer?

10:44:10 8 ANSWER: Correct.

10:44:13 9 QUESTION: Okay. So, earlier, I think you  
10:44:18 10 mentioned that you had overall knowledge of the banking  
10:44:26 11 industry and -- and some -- some knowledge of the check  
10:44:35 12 processing in the banking industry.

10:44:36 13 And that was sort of the expertise that you  
10:44:43 14 brought to the table when were a project manager working on  
10:44:48 15 Deposit@Home. Is that a fair characterization?

10:44:52 16 ANSWER: That's fair.

10:44:53 17 QUESTION: And that would have been in 2006 or so?

10:44:56 18 ANSWER: That's when I started work on  
10:45:00 19 Deposit@Home project, but all of the experience I had  
10:45:04 20 gotten with the check processing was prior to that.

10:45:06 21 QUESTION: Okay.

10:45:07 22 ANSWER: Yeah.

10:45:07 23 QUESTION: So -- so at that time, was receiving an  
10:45:13 24 account identification number a standard or conventional  
10:45:19 25 banking process?

10:45:20 1 ANSWER: When you say "receiving an account  
10:45:22 2 identification number," are you talking about just -- just  
10:45:24 3 the account number?

10:45:26 4 QUESTION: Sure.

10:45:28 5 ANSWER: I would say any time that you're going to  
10:45:32 6 make a deposit or any type of transaction, they would need  
10:45:37 7 to know what account that was going to be -- you would be  
10:45:41 8 interacting with at that time.

10:45:43 9 QUESTION: So is the answer yes?

10:45:51 10 ANSWER: I would -- I would say yes.

10:45:53 11 QUESTION: Okay. What about receiving a check  
10:45:58 12 amount indication, would that have been a standard or  
10:46:01 13 conventional banking process in 2006?

10:46:04 14 ANSWER: I would say it is a standard process, but  
10:46:09 15 how that's done would differ depending on the channel.

10:46:13 16 QUESTION: Okay. But -- but that's something that  
10:46:16 17 existed prior to remote deposit capture?

10:46:19 18 ANSWER: Receiving a deposit amount?

10:46:23 19 QUESTION: Receiving a check amount indication?

10:46:29 20 ANSWER: A check amount indication?

10:46:35 21 QUESTION: Yes.

10:46:36 22 ANSWER: Again, depending on channel, I would say  
10:46:38 23 if a teller was receiving it, they would get the indication  
10:46:42 24 visually by eyeing the check. So it -- it would differ  
10:46:45 25 depending on the channel.

10:46:46 1                   QUESTION: But regardless of the channel or how it  
10:46:49 2 differed, the fact of receiving it existed?

10:46:52 3                   ANSWER: Correct.

10:46:53 4                   QUESTION: What about receiving check images?

10:46:56 5 Was -- was that something that existed prior to remote  
10:46:59 6 deposit capture?

10:46:59 7                   ANSWER: Receiving check images, I would say in a  
10:47:06 8 consumer banking environment didn't really exist prior to  
10:47:11 9 Deposit@Home because they would walk in and hand you a  
10:47:14 10 paper check and you weren't receiving an image.

10:47:17 11                  QUESTION: What about optical character  
10:47:20 12 recognition, is that something that existed prior to remote  
10:47:27 13 deposit capture?

10:47:27 14                  ANSWER: Within, I guess, the industry and not  
10:47:34 15 just banking, I guess optical character recognition as a  
10:47:37 16 technology existed. There was in the item processing  
10:47:43 17 process. And not knowing specifically, I would say there  
10:47:54 18 was some OCR done in the batch processing of items, but I  
10:48:00 19 wouldn't -- I wouldn't say specifically.

10:48:02 20                  QUESTION: But at some point in the process,  
10:48:10 21 validation of the routing number occurred?

10:48:12 22                  ANSWER: At some point in the process, yes.  
10:48:14 23 During the item processing process.

10:48:16 24                  QUESTION: Even before remote deposit capture?

10:48:20 25                  ANSWER: Yes.

10:48:20 1                   QUESTION: And then, of course, check deposits  
10:48:23 2 could be initiated even before remote deposit capture  
10:48:26 3 existed, right?

10:48:28 4                   ANSWER: Yes.

10:48:33 5                   QUESTION: If there had been prior research at  
10:48:36 6 USAA about capturing check images with cameras or camera  
10:48:40 7 phones, who -- who would know about that?

10:48:42 8                   ANSWER: Probably Bharat Prasad. Maybe Rey  
10:48:49 9 Medina. Chuck Oakes would probably know.

10:48:52 10                 (Videoclip ends.)

10:48:56 11                 THE COURT: Does that complete this witness by  
10:48:58 12 deposition?

10:48:59 13                 MS. WILLIAMS: Yes, Your Honor.

10:49:00 14                 THE COURT: Proceed with your next witness.

10:49:02 15                 MS. WILLIAMS: Thank you, Your Honor. Defense  
10:49:03 16 calls Mr. Randy Morlen, another USAA inventor.

10:49:07 17                 THE COURT: Proceed with the witness by  
10:49:08 18 deposition.

10:49:08 19                 (Videoclip played.)

10:49:09 20                 QUESTION: Good morning, Mr. Morlen. Can you  
10:49:16 21 please state your name for the jury?

10:49:17 22                 ANSWER: Randy Ray Morlen.

10:49:20 23                 QUESTION: And how -- how long were you in that  
10:49:22 24 role as a lead analyst in the Applied Research group?

10:49:25 25                 ANSWER: From 2004 until, let me see -- so

10:49:30 1 probably until 2010 or '11, something like that.

10:49:41 2 QUESTION: When did you stop working at USAA?

10:49:43 3 ANSWER: Four years ago, so 2015 -- about August

10:49:46 4 of 2015.

10:49:48 5 QUESTION: So in 2005, you looked around for

10:49:52 6 solutions, you didn't find any. What did you do next?

10:49:57 7 ANSWER: When we -- so we -- I can't remember if

10:50:02 8 we had a scanner or we went out and bought a scanner. We

10:50:07 9 hooked it up -- we had a little lab environment, and we

10:50:10 10 started doing development on being able to -- to scan a

10:50:14 11 check and putting it into a format that was

10:50:18 12 Check-21-compatible.

10:50:19 13 QUESTION: What type of scanner was this?

10:50:20 14 ANSWER: The cheapest one that we could find at

10:50:24 15 Walmart at the time. I -- it might have been a Lexmark or

10:50:27 16 something like that. I don't remember that specific.

10:50:29 17 QUESTION: This was a scanner that one might put

10:50:32 18 in their home?

10:50:33 19 ANSWER: Correct.

10:50:34 20 QUESTION: And after you began experimenting with

10:50:41 21 it, when -- strike that.

10:50:42 22 After you began experimenting with it, did you

10:50:46 23 ever come up with a workable solution?

10:50:50 24 ANSWER: Yes.

10:50:52 25 QUESTION: When was that?

10:50:53 1 ANSWER: I would -- I don't know specifics. I  
10:50:56 2 would imagine 2000 -- it was also in 2005.

10:51:00 3 QUESTION: Did you ever start experimenting with  
10:51:03 4 any other devices in place of a general purpose home  
10:51:07 5 scanner?

10:51:07 6 ANSWER: Yes. We looked at any kind of  
10:51:12 7 TWAIN-compatible device. So we -- we had some regular  
10:51:16 8 digital cameras, if you will, non-filmed cameras. So we  
10:51:19 9 took some digital cameras. I believe we also had some flip  
10:51:26 10 phones that you could plug in that would -- that were TWAIN  
10:51:31 11 compatible. When you -- when you plugged them in, it would  
10:51:36 12 recognize it, you know, so you could pull the images off.  
10:51:38 13 So we looked at that.

10:51:39 14 I don't remember what kind of phones they were at  
10:51:41 15 the time.

10:51:41 16 QUESTION: Okay. So you mentioned you  
10:51:45 17 experimented with digital cameras and flip phones?

10:51:47 18 ANSWER: It was any -- and video cameras, like  
10:51:50 19 webcams.

10:51:50 20 QUESTION: Video cameras?

10:51:51 21 ANSWER: Any kind of device that you could plug in  
10:51:55 22 and could be controlled by TWAIN at the time.

10:51:57 23 QUESTION: When did you first -- first experiment  
10:52:02 24 with digital cameras?

10:52:03 25 ANSWER: It would have been after we successfully

10:52:07 1 scanned a check with a scanner, so it would have probably  
10:52:11 2 been late 2005 or early 2006, I'm guessing.

10:52:16 3                   QUESTION: Now, all of this work that we've just  
10:52:19 4 been talking about, did it lead to the development of any  
10:52:23 5 product that USAA released?

10:52:24 6                   ANSWER: It led to eventually Deposit@Home and  
10:52:29 7 then after that, Deposit@Mobile.

10:52:32 8                   QUESTION: And you don't remember specifics as to  
10:52:35 9 when you first started experimenting with one type of  
10:52:38 10 device versus another device, you just know generally it  
10:52:41 11 was in --

10:52:42 12                   ANSWER: Well, we definitely used flatbed scanner  
10:52:45 13 first, and then everything else after that.

10:52:47 14                   QUESTION: Okay. Let's go back to the '227  
10:52:49 15 patent. I believe that was the first one I handed you.

10:52:54 16                   Does this patent discuss at all the use of mobile  
10:53:01 17 devices for the remote deposit of checks?

10:53:04 18                   ANSWER: Specifically, no. But generically with  
10:53:09 19 image capture device, yes.

10:53:09 20                   QUESTION: And what do you mean by that?

10:53:11 21                   ANSWER: It does not use the words "mobile  
10:53:13 22 device." It does -- generically, it is any image capture  
10:53:18 23 device, which is a mobile -- can be a mobile device.

10:53:22 24                   Generically, it's an image -- it does reference  
10:53:26 25 image capture device. But, specifically, it does not say

10:53:31 1 a -- a mobile camera. Image capture device would be a  
10:53:33 2 mobile device -- or a mobile device would be an image  
10:53:37 3 capture device.

10:53:37 4 QUESTION: Looking at this patent as a whole, does  
10:53:40 5 it have any discussion of a device that includes -- a  
10:53:46 6 single device that includes both a camera and a processor?

10:53:50 7 ANSWER: Specifically, no. But any digital device  
10:53:58 8 has a camera -- any digital imaging device has a camera and  
10:54:02 9 a processor.

10:54:05 10 QUESTION: Let's go to Figure 2 of this patent.  
10:54:10 11 At the bottom of Figure 2, it's labeled 246, there is  
10:54:13 12 depicted an image capture device, correct?

10:54:15 13 ANSWER: Yes.

10:54:15 14 QUESTION: And it looks to me like that's a  
10:54:21 15 scanner. Would you agree with that?

10:54:23 16 ANSWER: The image for -- that they used for an  
10:54:25 17 image capture device does appear to be a flatbed scanner.

10:54:29 18 QUESTION: And that's separate and apart from a  
10:54:31 19 computer that is also depicted in Figure 2, right?

10:54:33 20 ANSWER: In this image, it does not show them as  
10:54:39 21 one device.

10:54:39 22 QUESTION: You see where it says, an image capture  
10:54:44 23 device may be communicatively coupled to the computer?

10:54:48 24 ANSWER: Yes.

10:54:48 25 QUESTION: Does this describe an image capture

10:54:53 1 device that is separate from a computer?

10:54:55 2 ANSWER: The example that they give shows them as  
10:55:00 3 being separate devices.

10:55:06 4 QUESTION: And you would agree that there's no  
10:55:08 5 discussion in this patent of an integrated computer and  
10:55:14 6 image capture device?

10:55:14 7 ANSWER: In the -- the examples they give, I do  
10:55:18 8 not see where it refers to that.

10:55:20 9 QUESTION: Earlier, you mentioned that in your  
10:55:24 10 role as a lead analyst in the Applied Research group, that  
10:55:31 11 you looked at various different solutions which would allow  
10:55:37 12 for USAA members to remotely deposit checks, in the 2005  
10:55:45 13 time frame, and that you didn't find any; is that fair?

10:55:50 14 ANSWER: Correct. Yeah, so I didn't look -- look  
10:55:52 15 at solutions. I looked for solutions, and there were no  
10:55:55 16 solutions at the time.

10:55:59 17 (Videoclip ends.)

10:55:59 18 THE COURT: Does that complete this witness?

10:56:01 19 MS. WILLIAMS: Yes, Your Honor. And it completes  
10:56:03 20 our witnesses by deposition at this time.

10:56:04 21 THE COURT: All right. Then Defendant, call your  
10:56:07 22 next witness.

10:56:08 23 MR. MELSHEIMER: May it please the Court, Your  
10:56:08 24 Honor.

10:56:10 25 We call at this time Dr. John Villasenor.

10:56:14 1 THE COURT: All right. Dr. Villasenor, if you'll  
10:56:17 2 come forward and be sworn by the courtroom deputy.  
10:56:22 3 (Witness sworn.)  
10:56:31 4 THE COURT: Please come around and have a seat on  
10:56:35 5 the witness stand, sir.  
10:56:42 6 MR. MELSHEIMER: Your Honor, may I approach the  
10:56:44 7 Courtroom Security Officer and hand him a binder to provide  
10:56:50 8 the witness?  
10:56:50 9 THE COURT: You may approach.  
10:56:51 10 MR. MELSHEIMER: Your Honor, the binders have been  
10:56:53 11 provided to counsel.  
10:56:54 12 THE COURT: All right. Then you may proceed with  
10:56:55 13 your direct examination, Mr. Melsheimer.  
10:56:57 14 MR. MELSHEIMER: May it please the Court.  
10:56:57 15 JOHN VILLASENOR, PH.D., DEFENDANT'S WITNESS, SWORN  
10:56:57 16 DIRECT EXAMINATION  
10:56:58 17 BY MR. MELSHEIMER:  
10:56:58 18 Q. Good morning, sir.  
10:57:01 19 A. Good morning, sir.  
10:57:02 20 Q. Please introduce yourself to the jury.  
10:57:04 21 A. My name is John Villasenor, and I am a professor at  
10:57:10 22 UCLA. I was born and raised in the Washington, D.C., area,  
10:57:16 23 but I've lived in California for quite a number of years.  
10:57:19 24 And I've been married for a little over 20 years  
10:57:22 25 now, and I have a daughter who is recently gone off to

10:57:25 1 college and a son that's nearly finished with high school.

10:57:27 2 Q. Dr. Villasenor, what is your role in this case?

10:57:30 3 A. I was retained to act as an independent expert on the

10:57:34 4 technical issues relating to infringement and to provide an

10:57:37 5 opinion on -- on that.

10:57:38 6 Q. Did you prepare demonstratives to assist you in your

10:57:41 7 testimony today?

10:57:42 8 A. Yes, sir, I did. And the first of them is on the

10:57:45 9 screen now.

10:57:45 10 Q. All right. What is your current job or title?

10:57:47 11 A. So as I mentioned a moment ago, I'm on the faculty at

10:57:52 12 UCLA, the University of California, Los Angeles. And I'm a

10:57:55 13 professor in the electrical and computer engineering

10:57:58 14 department.

10:57:58 15 Q. How long have you been a professor at UCLA?

10:58:00 16 A. Since 1992, so I guess that's about almost 28 years

10:58:06 17 now.

10:58:06 18 Q. Do we have a slide summarizing your educational

10:58:09 19 background, sir?

10:58:09 20 A. Yes, sir, we do.

10:58:11 21 Q. What is shown on this slide?

10:58:12 22 A. I earned a Ph.D. at Stanford University in 1989, and a

10:58:20 23 Master's degree prior to that also at Stanford, and then

10:58:22 24 earlier than that, I earned my undergraduate degree in

10:58:26 25 electrical engineering at the University of Virginia.

10:58:29 1 Q. Are all those degrees in the field of electrical  
10:58:32 2 engineering?  
10:58:32 3 A. Yes, sir, they are.  
10:58:33 4 Q. Is that field also related to computers?  
10:58:35 5 A. Yes, in fact, my department at UCLA is called the  
10:58:40 6 Department of Electrical and Computer Engineering.  
10:58:42 7 Q. How old were you, sir, when you got your Ph.D.?  
10:58:44 8 A. I was 24.  
10:58:45 9 Q. How did you do that?  
10:58:48 10 A. Well, I worked hard and did it pretty quickly.  
10:58:50 11 Q. What was your first job after getting your Ph.D.?  
10:58:53 12 A. My first job after getting a Ph.D. was I had a post doc  
10:59:04 13 for a little while and then I was -- I worked at NASA at  
10:59:06 14 the Jet Propulsion Laboratory, that's one of the NASA  
10:59:10 15 laboratories and it's in Pasadena, California.  
10:59:12 16 Q. What kind of work did you do at NASA?  
10:59:14 17 A. At NASA I was working on ways to get digital images of  
10:59:17 18 the earth from space, and then -- today that's not  
10:59:19 19 considered too impressive. You can go on Google and click  
10:59:22 20 on, you know, Google Maps and get images. But back then, a  
10:59:25 21 lot of those technologies were a lot less accessible.  
10:59:28 22 Q. What did you do after your work at NASA?  
10:59:31 23 A. So immediately after working at NASA, I joined the  
10:59:34 24 faculty at UCLA in the electrical engineering department.  
10:59:38 25 Q. What other professional experience do you have that's

10:59:41 1 reflected on this slide?

10:59:42 2 A. This is just some examples. So over the years, I've  
10:59:46 3 done quite a bit of work funded by the United States  
10:59:49 4 Department of Defense. What I mean by funded by, that  
10:59:53 5 means that they will provide funding to, for example, UCLA  
10:59:57 6 or another institution I'm associated with, and I will  
11:00:02 7 direct and conduct some research that they believe is  
11:00:06 8 important.

11:00:06 9 Q. Outside of your work in the academic sector, have you  
11:00:10 10 also had some experience in the commercial sector?

11:00:12 11 A. I've -- I've consulted for quite a number of technology  
11:00:15 12 companies over the years. I've also had quite a lot of  
11:00:19 13 experience in what we call venture capital technology --  
11:00:25 14 venture capital, and that's looking at startup companies  
11:00:27 15 and deciding whether their proposals for new products and  
11:00:30 16 services are likely to be successful and what the market is  
11:00:32 17 and helping with those sorts of investment decisions.

11:00:36 18 Q. All told, Doctor, how long have you been working in the  
11:00:40 19 general field of imaging technology?

11:00:42 20 A. I would say I started that when I was still working on  
11:00:45 21 my Ph.D., so that's the mid-1980s. So really about a third  
11:00:50 22 of a century I've been working on those technologies and  
11:00:53 23 others.

11:00:53 24 Q. Do you teach courses in imaging technologies?

11:00:56 25 A. I created at UCLA the graduate-level course sequence in

11:01:02 1 digital image processing as well as the undergraduate  
11:01:06 2 course we have for undergraduates in image processing, and  
11:01:10 3 I've taught those courses multiple times.  
11:01:12 4 Q. Have you ever testified before in a lawsuit?  
11:01:14 5 A. I've testified in several legal matters in the past,  
11:01:16 6 yes.  
11:01:17 7 Q. Have you ever testified outside of court?  
11:01:19 8 A. Yes, I have.  
11:01:20 9 Q. Where?  
11:01:21 10 A. United States Congress.  
11:01:23 11 Q. What did you testify to the United States Congress  
11:01:26 12 about?  
11:01:26 13 A. I've been asked, I think it's about five times, to  
11:01:29 14 provide Congressional testimony. An example is on digital  
11:01:33 15 privacy, protecting privacy, given all the technology  
11:01:35 16 advances that -- that sometimes put privacy at risk.  
11:01:39 17 Q. Are you an inventor on any of your own patents, sir?  
11:01:42 18 A. Yes, sir, I am.  
11:01:43 19 Q. How many?  
11:01:43 20 A. I think I'm -- I think it's about 20 issued U.S.  
11:01:47 21 patents that I'm a named inventor on now.  
11:01:49 22 Q. Have you ever worked on any technology related to  
11:01:52 23 banking?  
11:01:52 24 A. Yes, sir, I have.  
11:01:53 25 Q. What is that?

11:01:54 1 A. So, for example, at UCLA, I led a team where we  
11:01:58 2 developed an app for helping people in countries -- in  
11:02:04 3 developing countries where they don't have a formal banking  
11:02:07 4 system nearly as developed as we have here, but they have  
11:02:11 5 some phones and more often smartphones to helping them get  
11:02:15 6 access to the kinds of services that the countries like the  
11:02:17 7 United States would get through traditional banks.

11:02:19 8 Q. Are you being compensated for your time working on this  
11:02:22 9 case?

11:02:22 10 A. Yes, sir, I am.

11:02:23 11 Q. At what rate are you being compensated for the time  
11:02:26 12 you're putting into this case?

11:02:27 13 A. \$800.00 per hour.

11:02:29 14 Q. About how many hours do you think you've worked on this  
11:02:32 15 case approximately?

11:02:33 16 A. Somewhat over a hundred, although I don't have the  
11:02:37 17 exact number, sir.

11:02:37 18 Q. Did Wells Fargo hire you to arrive at a certain opinion  
11:02:41 19 or conclusion?

11:02:41 20 A. No, sir, they did not. They asked for my independent  
11:02:44 21 opinion.

11:02:44 22 Q. Does your rate or compensation change in any way based  
11:02:48 23 on what the jury ultimately decides?

11:02:51 24 A. Not in any way, no.

11:02:54 25 MR. MELSHEIMER: Your Honor, may it please the

11:02:56 1 Court. I tender Dr. Villasenor as an expert in computer  
11:02:58 2 engineering and imaging technologies.

11:03:00 3 THE COURT: Is there objection?

11:03:01 4 MR. SHEASBY: No objection.

11:03:03 5 THE COURT: Without objection, the Court will  
11:03:05 6 recognize this witness as an expert in those designated  
11:03:08 7 fields.

11:03:08 8 You may continue, counsel.

11:03:10 9 MR. MELSHEIMER: May it please the Court.

11:03:11 10 We have our next slide, Mr. Bakale.

11:03:13 11 Q. (By Mr. Melsheimer) What is the date that USAA alleges  
11:03:17 12 its patents were invented?

11:03:19 13 A. My understanding is that the alleged date is October  
11:03:23 14 31st, 2006.

11:03:25 15 Q. Where do you get that date, sir?

11:03:26 16 A. Well, if you look on the -- it's not quite the front  
11:03:30 17 page, I think, but near the front of both patents, there is  
11:03:33 18 a claim made that that is the -- the priority date.

11:03:36 19 Q. Now, did you analyze whether the Plaintiff in this case  
11:03:40 20 is actually allowed to legally claim priority to 2006?

11:03:45 21 A. No, I was not asked to perform that work.

11:03:48 22 Q. Who did that work?

11:03:49 23 A. My understanding is that Mr. Saffici was -- was doing  
11:03:52 24 that.

11:03:52 25 Q. Were you here for Mr. Saffici's entire testimony?

11:03:55 1 A. Yes, sir, I was.

11:03:56 2 Q. Now, did you hear the discussion about your opinion

11:04:02 3 about what it takes to -- to be a person of ordinary skill

11:04:05 4 in the art of the technology involved in these patents?

11:04:08 5 A. Yes, I -- I did hear that.

11:04:10 6 Q. Do you think that your opinion was used in a fair way

11:04:14 7 or a misleading way?

11:04:15 8 A. I do not believe it was used in a fair way.

11:04:18 9 Q. Why do you say that?

11:04:20 10 A. Well, as came out in the re -- redirect of -- of

11:04:24 11 Mr. Saffici, I was very intentional to not only include an

11:04:28 12 education option, whether someone who could be a person of

11:04:32 13 ordinary skill in the art through formal college education,

11:04:35 14 but I also said that more experience can compensate for

11:04:39 15 less education, because in my own experience, including

11:04:42 16 with people -- relatives of my own, I've seen that people

11:04:46 17 can acquire extraordinary expertise without necessarily

11:04:51 18 having a formal degree. And I think it's really important

11:04:54 19 to respect that that is an equally valid path to obtaining

11:04:59 20 expertise.

11:05:00 21 Q. Did you hear about Mr. Saffici's 53 years of banking

11:05:03 22 experience?

11:05:03 23 A. Yes, I -- yeah, I did hear about that. Yes.

11:05:06 24 Q. Do you think he is at least a person of ordinary skill

11:05:10 25 in the art in these patents?

11:05:11 1 A. Yes, I'm just -- what I -- from perspective -- in terms  
11:05:13 2 of experience and what I said, I was two years old when he  
11:05:17 3 started working in banking.

11:05:19 4 Q. Let's go back to what technology was like before 2006.

11:05:23 5 What were mobile phones like back in the early  
11:05:26 6 '90s when you started at UCLA?

11:05:28 7 A. In the early '90s, I didn't have a mobile phone because  
11:05:32 8 I wasn't, I guess, at the leading edge, but I knew about  
11:05:36 9 them. And they were big, and they didn't do very much.  
11:05:39 10 They allowed you to talk, but not usually much else. And  
11:05:43 11 they were slow, and they weren't very -- they aren't nearly  
11:05:46 12 what they are today.

11:05:47 13 Q. By 2006, what were mobile phones like?

11:05:49 14 A. Mobile phones had gotten a lot more advanced. They had  
11:05:52 15 better processing power, and they were smaller and more  
11:05:55 16 capable. And -- and by that time, of course, you -- you  
11:05:57 17 had -- it was routine for people to use mobile phones to  
11:06:00 18 access the Internet, which really didn't happen nearly as  
11:06:03 19 much in the early 1990s.

11:06:07 20 Q. We've heard some discussions of apps in this trial,  
11:06:09 21 sir. What were apps like in 2006?

11:06:11 22 A. There really wasn't much in the way of apps, and that's  
11:06:14 23 because -- I think some other people have testified, as  
11:06:18 24 well.

11:06:18 25 Apple launched their iPhone -- I think it was

11:06:22 1 2007 -- and I think they opened up their app system in  
11:06:26 2 2000 -- around then or 2008. And that was when they made  
11:06:29 3 it possible for a lot of people to -- other people who  
11:06:32 4 weren't at Apple to develop apps that could then be  
11:06:34 5 provided through Apple, and that created this huge growth  
11:06:39 6 in apps that we -- we still see today. But I think that's  
11:06:41 7 what really started the industry on the heading it is  
11:06:44 8 today.

11:06:45 9 Q. Generally speaking, Doctor, what do the patents in this  
11:06:47 10 case describe?

11:06:48 11 A. The patents -- the patents describe doing a check  
11:06:53 12 deposit where you have a general purpose computer that's  
11:06:55 13 connected to, for example, a scanner or a digital camera.

11:07:00 14 Q. All right, sir. At -- at a very high level, what are  
11:07:08 15 you here to tell the jury about with respect to  
11:07:10 16 infringement?

11:07:10 17 A. I'm here to provide my conclusions regarding the  
11:07:13 18 assertions of infringement that were made by the Plaintiff.

11:07:15 19 Q. How did you come to understand what law you should  
11:07:18 20 apply in reaching your infringement conclusions?

11:07:21 21 A. So I was -- I've been informed that while I'm a  
11:07:25 22 technical expert, not an attorney, in order to reach this  
11:07:30 23 conclusion, we have certain legal frameworks, certain legal  
11:07:34 24 standards that -- that -- that we must apply.

11:07:36 25 And so counsel for Wells Fargo has informed me of

11:07:39 1 those standards, and I've also done some other cases where  
11:07:41 2 I've been informed of -- of standards.

11:07:44 3 Q. When a lot -- when analyzing infringement, is it  
11:07:47 4 important for you as an expert to apply the correct legal  
11:07:51 5 standard?

11:07:52 6 A. Yes, sir, it is.

11:07:53 7 Q. Why is that important?

11:07:55 8 A. Well, because if -- if -- even if the technical  
11:07:58 9 analysis is correct, if you don't apply the correct legal  
11:08:00 10 standard, you might reach an incorrect conclusion.

11:08:04 11 Q. What legal standards did you apply in this case with  
11:08:07 12 regard to non-infringement?

11:08:09 13 A. Well, for example, I was told it's important to look at  
11:08:14 14 the claim constructions that are provided by the Court, and  
11:08:17 15 then to look at the claims more generally, of course,  
11:08:20 16 including those constructions. And then you compare each  
11:08:25 17 asserted claim to the accused product, and you see if all  
11:08:28 18 the elements are present. And if there's one or more  
11:08:32 19 elements that are not present, then -- then there's no  
11:08:35 20 infringement.

11:08:35 21 Q. If a claim has many elements and there is one element  
11:08:40 22 missing in the accused product, what does that mean for the  
11:08:44 23 infringement analysis?

11:08:46 24 A. Well, that means that there isn't infringement because  
11:08:48 25 all -- I've been instructed that all the elements must be

11:08:51 1 present.

11:08:54 2 Q. Did you consider the meaning of the patents as of 2006?

11:08:59 3 A. Yes, I did.

11:09:00 4 Q. Why is that important?

11:09:02 5 A. Well, I was told that the claim is that -- by USAA that

11:09:07 6 the priority date for these patents is fall -- October

11:09:10 7 2006. And patents, as I've been instructed, should be

11:09:13 8 interpreted through the eyes of a person of ordinary skill

11:09:17 9 at the -- at the priority date. And I was told that I

11:09:19 10 should use October 2006 as the priority date.

11:09:22 11 Q. Why is it important to look at 2006, as opposed to

11:09:28 12 2017, when the patents in this case were actually filed

11:09:31 13 with the Patent Office?

11:09:31 14 A. Well, it's very important because if you're not

11:09:35 15 attentive to that, you can end up using hindsight in a way

11:09:39 16 that's improper. The technology has changed, of course, a

11:09:41 17 lot since -- between 2006 and 2017. And so it's important

11:09:45 18 to put yourself in the frame of mind of somebody in 2006

11:09:49 19 without being -- having your mind sort of have in mind

11:09:54 20 things that happened in the decade after that.

11:09:56 21 Q. We have a -- one more slide -- an additional slide.

11:10:00 22 Was there also legal standard you applied for a

11:10:03 23 system claim in a patent that involved multiple actors or

11:10:07 24 entities?

11:10:08 25 A. Yes, and that's on this slide right here.

11:10:11 1 Q. And what is this legal standard that you applied in  
11:10:14 2 your understanding?

11:10:15 3 A. Yes. So I was informed that when there's a system  
11:10:20 4 claim, which all of the claims, my understanding in these  
11:10:22 5 patents are, and -- and it is allegedly infringed but that  
11:10:31 6 infringement involves multiple entities, that to show  
11:10:32 7 infringement, the Plaintiff must show that a single entity  
11:10:34 8 does one of or more than -- at least one of the four things  
11:10:38 9 that are listed there -- makes, sells, or offers to sell,  
11:10:42 10 imports, or uses. And there's a specific test for each one  
11:10:45 11 of those, and I'll mention those later.

11:10:47 12 Q. Did you apply these legal standards in your  
11:10:53 13 infringement analysis, sir?

11:10:54 14 A. Yes, sir, I did.

11:10:55 15 MR. MELSHEIMER: All right. We have another  
11:10:56 16 slide, Mr. Bakale.

11:10:58 17 Q. (By Mr. Melsheimer) Tell the jury what else you did to  
11:11:00 18 prepare your opinions in this case, using the legal  
11:11:02 19 standards you just told the jury about.

11:11:04 20 A. So, for example, of course, I reviewed the patents and  
11:11:10 21 their file histories. I looked at source code as -- as  
11:11:13 22 appropriate. I looked at -- I spoke with an engineer from  
11:11:16 23 a company called Mitek named Mr. Andrew Wood. I reviewed  
11:11:22 24 some of the deposition transcripts. Of course, I read the  
11:11:24 25 report from Dr. Conte. And I also read the report from

11:11:27 1 Mr. Calman. And then, of course, I considered and applied  
11:11:31 2 the constructions that were supplied by the Court for the  
11:11:34 3 claim terms.

11:11:36 4 MR. MELSHEIMER: If we might have the next slide,  
11:11:38 5 Mr. Bakale.

11:11:38 6 Q. (By Mr. Melsheimer) Did the Court construe any of the  
11:11:40 7 claim terms that you mentioned earlier?

11:11:43 8 A. Yes, the Court did, and they're shown here. I won't  
11:11:46 9 read them out loud unless you want me to, but they're shown  
11:11:50 10 here.

11:11:50 11 Q. Did you apply them?

11:11:51 12 A. Yes, sir, I did.

11:11:52 13 MR. MELSHEIMER: The next slide, Mr. Bakale.

11:11:54 14 Q. (By Mr. Melsheimer) Can you give the jury an overview  
11:12:02 15 of the conclusions you reached as to non-infringement?

11:12:02 16 A. So there's -- there's two overarching reasons. One is  
11:12:04 17 that there's a confirming step that's recited in the '681  
11:12:11 18 patent. And the requirements of that step are not  
11:12:14 19 satisfied. And as a result, I do not believe that the '681  
11:12:21 20 patent is infringed.

11:12:21 21 And, secondly -- and this second reason applies to  
11:12:24 22 both the '681 patent and the '605 patent. There's no proof  
11:12:28 23 that Wells Fargo or users make, sell, offer to sell,  
11:12:35 24 import, or use the invention according to the legal  
11:12:37 25 standard I just mentioned a moment ago.

11:12:39 1 Q. Well, let's into the '681 patent. Let's start with  
11:12:46 2 Claim 30.

11:12:47 3 Does Wells Fargo infringe Claim 30 of this patent  
11:12:50 4 based on your analysis, sir?

11:12:52 5 A. No, sir, it does not.

11:12:53 6 Q. Why not?

11:12:56 7 A. So what's shown on the screen here is Claim 30 is a  
11:12:59 8 pretty long claim. So what's shown here is -- is one of  
11:13:03 9 the -- it's actually kind of a combination of a few parts  
11:13:08 10 of that claim.

11:13:08 11 But if you look at the second line of the screen  
11:13:10 12 there starting with the word "confirming," everything from  
11:13:13 13 there on is -- is one of the elements or sub-elements of  
11:13:19 14 the -- of the claim. And the Wells Fargo system does not  
11:13:22 15 do what's required in that claim element.

11:13:26 16 Q. Is this the confirming step that I examined Dr. Conte  
11:13:32 17 about earlier in the trial?

11:13:33 18 A. For that claim, that's right. Yes.

11:13:34 19 Q. Confirming that the mobile check deposit can go forward  
11:13:38 20 after optical character recognition is performed on the  
11:13:41 21 check, and it continues?

11:13:44 22 A. That's right, yes, sir.

11:13:44 23 Q. What is optical character recognition?

11:13:49 24 A. So optical character recognition -- there's some other  
11:13:51 25 witnesses that have testified to that. That's when a

11:13:53 1 computer can look at an image on a piece of paper, for  
11:13:56 2 example, and it's got letters and numbers on it, and the  
11:13:59 3 computer can read that just like we do as people and say  
11:14:02 4 whether it's a -- whether it's a 1 or a 2 or an A or a B,  
11:14:06 5 and a computer can do that automatically. That's optical  
11:14:12 6 character recognition.

11:14:12 7 MR. MELSHEIMER: Let's move to the next slide,  
11:14:14 8 Mr. Bakale.

11:14:14 9 Q. (By Mr. Melsheimer) How do you know from reading the  
11:14:16 10 patent where the patent says this confirming step needs to  
11:14:22 11 occur in the system it describes?

11:14:23 12 A. So this is -- on the left, you see the entire claim.  
11:14:29 13 And as I mentioned, it's a long claim. So there's some  
11:14:33 14 things that are highlighted and also put over on the right  
11:14:35 15 of that slide.

11:14:35 16 And if you look on the lower right of the screen  
11:14:38 17 there, there's -- there's at least a portion of the  
11:14:41 18 confirming step, and it talks about optical character  
11:14:45 19 recognition --

11:14:46 20 THE COURT: Dr. Villasenor, could you slow down  
11:14:48 21 just a little bit?

11:14:48 22 THE WITNESS: Yes, Your Honor. I apologize.

11:14:49 23 THE COURT: Please do. Thank you.

11:14:54 24 A. So the -- the things in that confirming step have to be  
11:14:57 25 done and -- on the mobile device. And in the accused

11:15:01 1 system, for example, the optical character recognition to  
11:15:03 2 determine the amount of the check is not done on the mobile  
11:15:08 3 device.

11:15:08 4 Q. (By Mr. Melsheimer) When you say the accused system,  
11:15:12 5 is that the Wells Fargo system that's accused of  
11:15:13 6 infringement?

11:15:14 7 A. Yes, sir, it is.

11:15:14 8 Q. Now, what does Dr. Conte say is the -- the customer's  
11:15:21 9 mobile device in this claim?

11:15:22 10 A. So Dr. Conte points to the smartphone that's owned by  
11:15:26 11 the user.

11:15:27 12 Q. What does the claim require the mobile device to do in  
11:15:35 13 the confirming step laid out on this slide?

11:15:38 14 A. The claim requires that the mobile device performs  
11:15:41 15 optical character recognition of the amount on the check,  
11:15:44 16 and that -- and that's not what occurs.

11:15:46 17 Q. Are you getting that from the language of the claim  
11:15:48 18 that says: Causes the customer's mobile device to perform?

11:15:54 19 A. Among other things, yes.

11:15:56 20 Q. And then the confirming step is listed as one of the  
11:16:00 21 multiple steps listed in that claim, correct?

11:16:02 22 A. Yes, sir.

11:16:03 23 Q. In the Wells Fargo system, does the user's smartphone  
11:16:13 24 perform the confirming step?

11:16:15 25 A. Not as it's laid out in this claim.

11:16:18 1 Q. Why do you say that, sir?

11:16:19 2 MR. MELSHEIMER: Let's take a look at Slide -- the  
11:16:21 3 next slide.

11:16:22 4 A. So in the Wells Fargo system, the image is transmitted  
11:16:25 5 to the server, the computer at Wells Fargo, without any  
11:16:30 6 optical character recognition first having been performed  
11:16:32 7 to find the amount on the check. And it's only after the  
11:16:35 8 image arrives at the server, the Wells Fargo server, that  
11:16:40 9 then after that point, the -- the -- the OCR is performed  
11:16:44 10 and the amount on the check is read, but that's not  
11:16:47 11 happening on the mobile device.

11:16:48 12 Q. (By Mr. Melsheimer) What did Dr. Conte -- where did  
11:16:50 13 Dr. Conte say that this -- the functionality for this  
11:16:56 14 confirming limitation in the OCR occurs?

11:16:59 15 A. My recollection is that Dr. Conte also testified that  
11:17:05 16 the OCR of the amount occurs -- it is performed on the --  
11:17:09 17 on the server.

11:17:10 18 Q. Does Dr. Conte say that the OCR of the amount occurs on  
11:17:14 19 the smartphone or the server?

11:17:17 20 A. My recollection is that he -- he said it occurs on the  
11:17:20 21 server.

11:17:20 22 Q. Does performing OCR on the server, that's that -- those  
11:17:25 23 other computers in the system, separate from the mobile  
11:17:30 24 phone?

11:17:30 25 A. Yes, sir.

11:17:30 1 Q. Does performing OCR on the server meet or satisfy the  
11:17:36 2 confirming limitation in this claim?  
11:17:37 3 A. No, I do not believe it does.  
11:17:40 4 Q. What does that mean for your conclusion about Claim 30  
11:17:44 5 of the -- of the patent?  
11:17:47 6 A. That means that there would be no infringement of  
11:17:50 7 Claim 30.  
11:17:51 8 Q. But what if the Wells Fargo system does all those other  
11:17:55 9 elements?  
11:17:55 10 A. That doesn't matter in the sense that, as I mentioned  
11:17:58 11 earlier, if there is any one element that isn't satisfied  
11:18:03 12 that there's no infringement.  
11:18:05 13 MR. MELSHEIMER: Let's look at our next slide  
11:18:07 14 which has Claim 12.  
11:18:08 15 Q. (By Mr. Melsheimer) Does Claim 12 have a similar  
11:18:10 16 confirming step to the claim we just looked at, sir?  
11:18:14 17 A. Yes, sir, it does.  
11:18:15 18 Q. Where is the confirming step required to happen in  
11:18:20 19 Claim 12 of the patent?  
11:18:21 20 A. In the claim, it's required to happen at the mobile  
11:18:24 21 device.  
11:18:24 22 Q. Is it one of the steps that's listed as happening on  
11:18:29 23 the mobile device in Claim 12?  
11:18:31 24 A. Yes, sir.  
11:18:32 25 Q. Now, were you here for Dr. Conte's testimony?

11:18:44 1 A. Yes, sir, I was.

11:18:45 2 Q. Did -- did you hear him talk a lot about the Wells

11:18:48 3 Fargo system?

11:18:49 4 A. I did.

11:18:50 5 Q. Now, does the fact that the claim uses the word

11:18:53 6 "system," does that mean that Wells Fargo infringes?

11:18:56 7 A. Not necessarily, no.

11:18:58 8 Q. Why do you say that?

11:18:59 9 A. Well, I think you have to look at the specifics of

11:19:03 10 what -- what's in the claim language, and I think as I read

11:19:05 11 it, the confirming step must occur on the -- on the mobile

11:19:09 12 device in the claim.

11:19:11 13 MR. MELSHEIMER: Let's take a look at one of

11:19:12 14 Dr. Conte's demonstratives, PDX-2.69.

11:19:17 15 Q. (By Mr. Melsheimer) Do you remember this being used in

11:19:20 16 Dr. Conte's direct examination?

11:19:22 17 A. Yes, I do.

11:19:23 18 Q. And it -- it has the claim on the left?

11:19:26 19 A. Yes, sir.

11:19:26 20 Q. What's on the right?

11:19:28 21 A. Well, on the right is a picture of a smartphone or a

11:19:31 22 phone, and above it, it says: Optical character

11:19:35 23 recognition extracting text from digital image. And on the

11:19:39 24 lower right, it says: The check amount.

11:19:41 25 Now, in fact, that extraction, that reading is --

11:19:45 1 is not performed on the mobile device. It's actually  
11:19:48 2 performed -- the reading of the \$5.00, for example, that's  
11:19:51 3 actually performed at the server, even though it's shown  
11:19:53 4 here on a picture on a phone.

11:19:56 5 MR. MELSHEIMER: Let's look at another one of  
11:19:57 6 Dr. Conte's demonstratives, PDX-2.73.

11:20:02 7 Q. (By Mr. Melsheimer) This is a slide. Do you remember  
11:20:06 8 this being used in his direct examination?

11:20:08 9 A. Yes, sir, I do.

11:20:09 10 Q. It says: App only displays confirmation page after  
11:20:15 11 deposit has been validated?

11:20:16 12 A. Yes, that's right.

11:20:17 13 Q. Is this the confirming step that we've been talking  
11:20:19 14 about, or is this confirming?

11:20:22 15 A. Well, this is informing the user that -- that a  
11:20:27 16 confirmation has been made. But if you look at the top of  
11:20:30 17 the slide, it's underlined, we load information from the  
11:20:33 18 server and use them to populate the form.

11:20:36 19 So the smartphone is getting that information  
11:20:37 20 actually from the server, whereas it's where all the action  
11:20:41 21 for doing the actual OCR is occurring.

11:20:44 22 Q. Does this claim element use the term confirming or  
11:20:48 23 validating?

11:20:49 24 A. It uses the term confirming.

11:20:52 25 Q. Are those the same things?

11:20:53 1 A. I focused on confirming.

11:20:58 2 Q. Where is all the work being done or the logic being

11:21:02 3 done with respect to the confirming step?

11:21:05 4 A. It's the OCR reading the amount is -- at the server.

11:21:08 5 Q. And does -- did Dr. Conte testify that the logic to do

11:21:12 6 that is all at the server?

11:21:14 7 A. I believe that's what I heard him say.

11:21:21 8 Q. Does every asserted claim of the '681 patent recite or

11:21:27 9 require a confirming step like the ones you've described?

11:21:29 10 A. Yes, sir, it does.

11:21:30 11 Q. Including Dependent Claims 13, 14, 20, and 22?

11:21:35 12 A. Yes, sir.

11:21:36 13 Q. Where do all the claims require the confirming step to

11:21:40 14 occur?

11:21:40 15 A. On the mobile device.

11:21:41 16 Q. Does Dr. Conte accuse anything differently for the

11:21:49 17 confirming step in any of the different claims that are

11:21:51 18 asserted in this case?

11:21:52 19 A. No, my recollection is that he does not, sir.

11:21:55 20 Q. What does he point to for every confirming step?

11:21:58 21 A. He points to the same thing.

11:21:59 22 Q. Which is what?

11:21:59 23 A. He points to the -- the -- he points to this

11:22:02 24 confirmation that's shown on the screen here.

11:22:05 25 Q. On the cell phone?

11:22:07 1 A. Yes.

11:22:07 2 Q. What is your conclusion about whether Wells Fargo's

11:22:11 3 system practices the confirming step of any claim of the

11:22:14 4 '681 patent?

11:22:14 5 A. I conclude that Wells Fargo does not practice the

11:22:17 6 confirming step of any of the asserted claims of the '681

11:22:21 7 patent.

11:22:21 8 Q. So, in your opinion, does Wells Fargo infringe any

11:22:24 9 claim of the '681?

11:22:24 10 A. No, sir.

11:22:25 11 Q. Okay. I want to move on to -- do you have other

11:22:29 12 non-infringement positions in this case?

11:22:31 13 A. Yes, sir.

11:22:32 14 Q. Do you have a non-infringement opinion based on the

11:22:44 15 notion of what's called divided infringement?

11:22:46 16 A. Yes, sir, I do.

11:22:48 17 Q. Okay. And which claims in the case does this concept

11:22:52 18 apply to?

11:22:53 19 A. It applies to every single one of the asserted claims.

11:22:55 20 Q. Which of the asserted claims are so-called systems

11:23:00 21 claims?

11:23:01 22 A. My understanding is all of them are.

11:23:03 23 Q. Do the asserted claims in this case involve multiple

11:23:08 24 entities or parties to perform different steps?

11:23:10 25 A. Yes, as -- as USAA has accused Wells Fargo, yes.

11:23:16 1 Q. How do you know that? Give us an example.

11:23:17 2 A. Well, for example, the claims recite a mobile device or

11:23:22 3 a portable device, and so this is an example of one of the

11:23:26 4 claims, and you can see I've highlighted a portable device,

11:23:30 5 and Dr. Conte has pointed to the user's smartphone as that

11:23:35 6 device.

11:23:36 7 And that's -- and then the claim also recites

11:23:38 8 another computer, remote from the portable device, and he

11:23:42 9 has pointed to the Wells Fargo servers. So those are the

11:23:47 10 user's device, the user's smartphone is, of course,

11:23:50 11 distinct from the Wells Fargo's servers.

11:23:51 12 Q. Well, who owns the portable device?

11:23:53 13 A. Well, the user presumably owns the smartphone that

11:23:58 14 Dr. Conte pointed to.

11:23:59 15 Q. Who owns and controls all those servers and computers

11:24:02 16 in the Wells Fargo system?

11:24:03 17 A. Certainly not the -- not the consumer. Wells Fargo

11:24:06 18 controls some of them.

11:24:07 19 Q. Can you remind the jury on the next slide, sir, what

11:24:10 20 standard you applied for systems claims involving multiple

11:24:14 21 entities?

11:24:15 22 A. So as I mentioned before, when a Plaintiff is -- well,

11:24:20 23 as I've been instructed, when a Plaintiff is accusing

11:24:24 24 infringement in a manner that involves multiple entities,

11:24:28 25 the Plaintiff must show that a single entity does one of

11:24:32 1 those following four things -- or more, makes, sells, or  
11:24:35 2 offers to sell, imports or uses.

11:24:39 3 Q. If the jury were to conclude that the Wells Fargo's  
11:24:42 4 systems includes every element of the claims in these  
11:24:47 5 patents, based on your understanding, is that enough to  
11:24:49 6 show infringement?

11:24:50 7 A. Well, they would have to -- this -- this -- the  
11:24:54 8 requirements of this slide would -- would still need to be  
11:24:56 9 satisfied.

11:24:56 10 Q. Let's go through the type -- this type of infringement  
11:25:00 11 one-by-one.

11:25:01 12 Did -- did Dr. Conte show that Wells Fargo makes  
11:25:06 13 the invention in this case?

11:25:08 14 A. Well, no, he did not.

11:25:09 15 Q. What -- what -- what standard applies for making an  
11:25:13 16 invention?

11:25:13 17 A. Well, since he's accusing Wells Fargo of being the  
11:25:17 18 infringer, he would need to show that Wells Fargo makes the  
11:25:21 19 smartphone that he's accused of being part of the  
11:25:23 20 infringing system and then combines that smartphone --

11:25:29 21 MR. SHEASBY: Your Honor, I object. I move to  
11:25:30 22 strike. It's outside the scope of his report.

11:25:35 23 MR. MELSHEIMER: Your Honor, I believe this is in  
11:25:37 24 his report, but I can rephrase.

11:25:39 25 THE COURT: Rephrase.

11:25:40 1 MR. SHEASBY: And, Your Honor, just to be clear,  
11:25:43 2 will the Court strike that answer?  
11:25:45 3 THE COURT: I'll strike that answer.  
11:25:47 4 MR. SHEASBY: Thank you.  
11:25:47 5 THE COURT: Counsel may rephrase.  
11:25:49 6 Q. (By Mr. Melsheimer) What is your understanding of the  
11:25:51 7 legal standard for making a system?  
11:25:57 8 A. The accused infringer must make it and combine all the  
11:26:03 9 claim elements.  
11:26:04 10 Q. Does -- did -- did -- in your review of Dr. Conte's  
11:26:08 11 report, did he go through and make this analysis with  
11:26:10 12 respect to making?  
11:26:12 13 A. I don't believe he asserted that Wells Fargo makes the  
11:26:15 14 smartphone.  
11:26:16 15 MR. SHEASBY: Your Honor, I object. Can we  
11:26:19 16 approach?  
11:26:20 17 THE COURT: Approach the bench.  
11:26:21 18 (Bench conference.)  
11:26:27 19 MR. SHEASBY: Your Honor, there is nothing in this  
11:26:29 20 man's report that says that you have to make a smartphone.  
11:26:33 21 THE COURT: You're going to have to talk softer up  
11:26:34 22 here, counsel.  
11:26:34 23 MR. SHEASBY: There's nothing in this man's report  
11:26:36 24 that says you have to make a smartphone to infringe this  
11:26:45 25 claim. All he says is you have to combine -- absolutely --

11:26:45 1 THE COURT: Speak into this.

11:26:46 2 MR. SHEASBY: It is absolutely inappropriate for

11:26:48 3 him to be suggesting to this jury that you have to make a

11:26:51 4 smartphone to infringe this claim. It's an undisclosed

11:26:55 5 point, and I would like a curative instruction for the jury

11:26:58 6 to ignore any discussion --

11:26:58 7 THE COURT: All right. All right. What's your

11:26:59 8 response?

11:26:59 9 MR. MELSHEIMER: Your Honor, my response is as

11:27:01 10 follows.

11:27:03 11 THE COURT: Why don't you find the page and quit

11:27:05 12 turning before you respond?

11:27:11 13 MR. MELSHEIMER: Your Honor, may I hand the Court

11:27:16 14 this page of Dr. Villasenor's report? It's Paragraph 161.

11:27:41 15 THE COURT: All right.

11:28:05 16 MR. SHEASBY: There's nothing in his report that

11:28:07 17 says you have to make a cell phone to infringe this claim.

11:28:10 18 That's exactly what he told the jury. You have to make the

11:28:13 19 cell phone to infringe the claim.

11:28:14 20 MR. MELSHEIMER: I think he said that Wells

11:28:16 21 Fargo -- if they want me to clarify that -- but there's

11:28:19 22 really no dispute that Wells Fargo doesn't make the user's

11:28:23 23 cell phone, Your Honor. And so the point being if you want

11:28:26 24 me to clarify it, does Wells Fargo make the cell phone in

11:28:29 25 this case? No.

11:28:30 1 I don't -- I don't know why we're arguing.

11:28:33 2 MR. SHEASBY: Your Honor, it is absolutely

11:28:35 3 irrelevant who makes the cell phone. This is highly

11:28:38 4 prejudicial, and the jury should be instructed to ignore

11:28:41 5 that. There's not any law that says you have to make a

11:28:44 6 piece of an element, you have to combine them together.

11:28:44 7 The idea of making a cell phone, which has now come out

11:28:46 8 twice -- and I believe it's come out intentionally by this

11:28:49 9 witness. It's highly prejudicial and not disclosed in his

11:28:52 10 report.

11:28:55 11 MR. MELSHEIMER: Your Honor, that's one of the --

11:28:57 12 that's one of the ways you can show infringement is making,

11:29:02 13 and they do not make the accused system. They don't make

11:29:05 14 the cell phone. They don't combine all the elements. So I

11:29:09 15 don't -- I don't -- I think it's disclosed in his report,

11:29:13 16 and it's proper under the law.

11:29:14 17 MR. SHEASBY: It is not the law that you have to

11:29:17 18 make a component to make a system. That is undisclosed

11:29:21 19 non-infringement defense. It's never been disclosed in

11:29:23 20 this case, ever. And it should not happen. It was done

11:29:26 21 intentionally in this examination.

11:29:28 22 MR. MELSHEIMER: Your Honor, there's no -- nothing

11:29:30 23 done intentionally, other than try to draw out what the

11:29:34 24 legal standards he implies are, Your Honor. I believe it's

11:29:37 25 disclosed in his report. And we're -- no one is

11:29:40 1 disputing about the --

11:29:41 2 THE COURT: All right. It's 11:30. I'm going to  
11:29:43 3 send the jury to lunch, and then we'll get to the bottom of  
11:29:46 4 this.

11:29:46 5 MR. MELSHEIMER: Okay. Thank you.

11:29:47 6 THE COURT: Okay.

11:29:48 7 (Bench conference concluded.)

11:29:53 8 THE COURT: Ladies and gentlemen of the jury, I  
11:29:54 9 need to finish this discussion with counsel outside your  
11:29:57 10 presence. It's 11:30.

11:29:59 11 If your lunch is not there, it will be shortly in  
11:30:02 12 the jury room. So we're going to recess for lunch at this  
11:30:04 13 time.

11:30:05 14 If you'll take your notebooks with you to the jury  
11:30:08 15 room. Follow all the instructions I've given you,  
11:30:11 16 including not to discuss the case with each other. And  
11:30:14 17 we'll try to reconvene approximately 12:30.

11:30:18 18 With that, the jury is excused for lunch.

11:30:20 19 COURT SECURITY OFFICER: All rise.

11:30:40 20 (Jury out.)

11:30:43 21 THE COURT: Be seated, please.

11:30:44 22 All right. Let me hear your argument one more  
11:31:34 23 time, Mr. Sheasby. From the podium, please.

11:31:45 24 MR. SHEASBY: Yes, Your Honor.

11:31:45 25 THE COURT: I've briefly reviewed the testimony

11:31:47 1 that's at issue.

11:31:48 2 MR. SHEASBY: Dr. Villasenor opined in his report  
11:31:51 3 that because the system involves a user's cell phone as  
11:31:54 4 part of the system, it's not infringing. And he's  
11:31:57 5 perfectly welcome to make that argument.

11:31:59 6 But the idea that you have to make each element of  
11:32:02 7 a claim to make the system is just not the law. In fact,  
11:32:08 8 in CENTRAK versus Sonitor Technologies, 915 F.3d 1360, a  
11:32:13 9 final assembler can be liable for making infringing com --  
11:32:17 10 combination even if it does not meet each individual  
11:32:22 11 component element.

11:32:23 12 What they're trying to do through Villa --  
11:32:25 13 Dr. Villasenor is, one, not in his report. He never argued  
11:32:25 14 that you have to make individual elements to infringe a  
11:32:25 15 claim.

11:32:29 16 And, two, it violates black letter law. The  
11:32:33 17 suggestion that Dr. Villasenor has made twice on the stand  
11:32:38 18 in -- in -- in reference to this, I believe, was -- I'm  
11:32:41 19 very troubled by it, Your Honor. I'm not going to --

11:32:43 20 THE COURT: All right. Let me hear a response.

11:32:45 21 MR. SHEASBY: I'll stop there.

11:32:47 22 THE COURT: Let me hear a response from  
11:32:48 23 Mr. Melsheimer.

11:32:48 24 MR. MELSHEIMER: Your Honor, I believe what is  
11:32:50 25 disclosed in his report is what was asked of him. If I

11:32:54 1 need to clarify it in some way, I'm happy to do that. The  
11:32:59 2 question is, we're going to go through each one of these  
11:33:02 3 steps, and one of them is making --

11:33:04 4 THE COURT: Take the section of the witness's  
11:33:05 5 report that you showed me at the bench and put it on the  
11:33:08 6 overhead projector, please, since I don't have a copy here  
11:33:12 7 in front of me.

11:33:14 8 MR. MELSHEIMER: He does not -- so the disclosure  
11:33:25 9 is that -- he's saying what Dr. Conte did not do. Does not  
11:33:29 10 show that Wells Fargo infringes by making the accused  
11:33:32 11 system. Wells Fargo plainly does not combine all the  
11:33:35 12 elements because its users, not Wells Fargo, provide the  
11:33:42 13 smartphone accused as the remote device.

11:33:43 14 THE COURT: All right. Well, providing the  
11:33:45 15 smartphone is not making the smartphone. And the law is  
11:33:47 16 pretty clear, as I see it, that a final assembler can be  
11:33:56 17 liable for making an infringing combination, even if he  
11:33:59 18 does not make each individual component element. I think  
11:34:03 19 that's the CENTRAK holding, relying on Cross Medical and  
11:34:08 20 Lifetime.

11:34:08 21 The witness clearly told the jury in the testimony  
11:34:12 22 I reviewed that the Defendant -- it doesn't infringe  
11:34:19 23 because it does not make the cell phone. Didn't say  
11:34:22 24 because it failed to combine the cell phone with the other  
11:34:26 25 elements. It clearly uses the verb "did not make." So I'm

11:34:33 1 going to sustain the objection.

11:34:34 2 Mr. Johnston, check with the jury. If they're not  
11:34:39 3 eating lunch, and I don't think it's been delivered yet,  
11:34:39 4 bring them back in the courtroom, and I'm going to instruct  
11:34:39 5 them right now.

11:34:42 6 COURT SECURITY OFFICER: It's been delivered.

11:34:43 7 THE COURT: It's been delivered?

11:34:43 8 COURT SECURITY OFFICER: Yes, sir.

11:34:43 9 THE COURT: Well, tell them to put their forks  
11:34:46 10 down and come back in the courtroom.

11:34:48 11 Have a seat, counsel.

11:36:44 12 COURT SECURITY OFFICER: All rise.

11:36:45 13 (Jury in.)

11:36:46 14 THE COURT: Please be seated.

11:36:50 15 I apologize, ladies and gentlemen. Only a Federal  
11:36:56 16 Judge would have the temerity to interrupt eight people as  
11:37:04 17 they're starting their lunch, but I wanted to correct this  
11:37:04 18 before we went through the entire lunch break.

11:37:04 19 During the testimony with Dr. Villasenor just a  
11:37:09 20 moment ago, he was asked: What standard applies for making  
11:37:13 21 an invention?

11:37:15 22 And his answer was: Well, since he's accusing  
11:37:18 23 Wells Fargo of being the infringer, he would need to show  
11:37:21 24 that Wells Fargo makes the smartphone that he's accused of  
11:37:26 25 being part of the infringing system and then combines that

11:37:29 1 smartphone.

11:37:30 2 That's an incorrect statement, and it's counter to  
11:37:36 3 the law. I have sustained the Plaintiff's objection. And  
11:37:40 4 there is no requirement that Wells Fargo must make the  
11:37:46 5 smartphone.

11:37:48 6 They must combine all the elements in the claims  
11:37:51 7 to achieve the claimed system. But they do not have to  
11:37:55 8 manufacture each item that is combined as called for in the  
11:38:01 9 claims. It's the combination or a lack of combination  
11:38:04 10 that's required, not the actual manufacturing of the  
11:38:09 11 smartphone by Wells Fargo.

11:38:11 12 That was an improper -- it's improper testimony,  
11:38:14 13 and so I am instructing you to strike that from your  
11:38:17 14 memories and disregard that question and that answer or  
11:38:21 15 anything of a similar type.

11:38:24 16 All right. With that, I will allow you to resume  
11:38:27 17 your lunch. Thank you for your patience and understanding.  
11:38:31 18 The jury is excused for lunch break.

11:38:39 19 COURT SECURITY OFFICER: All rise.

11:38:40 20 (Jury out.)

11:38:42 21 THE COURT: All right. Given that the jury is out  
11:38:49 22 of the courtroom, we will recess for lunch and reconvene at  
11:38:53 23 or near 12:30.

11:38:55 24 MR. MELSHEIMER: Thank you, Your Honor.

11:38:55 25 THE COURT: The Court stands in recess.

11:38:57 1 MR. SHEASBY: Thank you, Your Honor.  
11:38:58 2 COURT SECURITY OFFICER: All rise.  
11:39:00 3 (Recess.)  
4

5 CERTIFICATION  
6

7 I HEREBY CERTIFY that the foregoing is a true and  
8 correct transcript from the stenographic notes of the  
9 proceedings in the above-entitled matter to the best of my  
10 ability.

11

12

13 /S/ Shelly Holmes  
14 SHELLY HOLMES, CSR, TCRR  
OFFICIAL REPORTER  
State of Texas No.: 7804  
15 Expiration Date: 12/31/20

1/9/2020  
Date

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